

**AMENDMENT NO. 2 TO AGREEMENT  
BY & BETWEEN  
COUNTY OF MONTEREY**

**&**

**THE MANDEL GISNET CENTER FOR CONFLICT MANAGEMENT, a 501 (c)(3), A  
DIVISION OF THE MONTEREY COLLEGE OF LAW**

**THIS IS Amendment No. 2** is made to the Agreement by and between the Mandel Gisnet Center for Conflict Management, a 501 (c)(3), a division of the Monterey College of Law, (“CONTRACTOR”), and the County of Monterey, a political subdivision of the State of California (“County”).

**WHEREAS**, County and CONTRACTOR entered into an Agreement not to exceed \$50,000 on March 22, 2019 for administrative law judge services for administrative hearings related to the Environmental Health Bureau; and

**WHEREAS**, County and CONTRACTOR amended the Agreement via Amendment No. 1 to extend the term through June 30, 2021; and

**WHEREAS**, County and CONTRACTOR wish to amend the Agreement via Amendment No. 2 to extend the term through June 30, 2022 and amend Exhibit A to include the County’s adopted Procedures and Qualifications of Hearing Officers for LEA Procedures.

**NOW THEREFORE**, the County and CONTRACTOR hereby agree to amend the Agreement in the following manner:

1. Section 3, “TERM OF AGREEMENT”, is amended to read as follows at 3.01: “The term of this Agreement is from March 22, 2019 through June 30, 2022 unless sooner terminated pursuant to the terms of this Agreement”, which replaces “The term of this Agreement is from May 22, 2019 through and including June 30, 2021 unless sooner terminated pursuant to the terms of this Agreement.”
2. Exhibit A is amended to include the County’s adopted Procedures and Qualifications of Hearing Officers for LEA Procedures.
3. Except as provided herein, all remaining terms, conditions and provisions of the Agreement are unchanged and unaffected by this Amendment No. 2 and shall continue in full force and effect.
4. A copy of this Amendment No. 2 shall be attached to the Agreement and shall be incorporated therein as if fully set forth in the Agreement.
5. The recitals to this Amendment No. 2 are hereby incorporated by this reference.

**\*\*\*THIS SECTION INTENTIONALLY LEFT BLANK\*\*\***

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 as of the date set forth below their respective signatures.

COUNTY OF MONTEREY

CONTRACTOR

By: \_\_\_\_\_  
Contracts/Purchasing Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Department Head (if applicable)

Date: \_\_\_\_\_

Approved as to Form

By: \_\_\_\_\_  
Deputy County Counsel

Date: \_\_\_\_\_

Approved as to Fiscal Provisions

By: \_\_\_\_\_  
Auditor/Controller

Date: \_\_\_\_\_

Approved as to Liability Provisions

By: \_\_\_\_\_  
Risk Management


Date: \_\_\_\_\_

**Mandel Gisnet Center for Conflict Management, a 501 (c)(3), a division of the Monterey College of Law**

By:   
(Signature of Chair, President, or Vice-President)\*

PRESIDENT  
Name and Title

Date: 5/13/2021

By:   
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)\*

Liza Horvath, Treasurer  
Name and Title

Date: 05/17/2021

\*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.



## EXHIBIT A –SCOPE OF SERVICES/PAYMENT PROVISIONS

Between the County of Monterey (County) and  
The Mandel Gisnet Center for Conflict Management, a 501(c)(3), (The Center), a Division of the  
Monterey College of Law

### DESCRIPTION OF SERVICES

#### Hearing

##### 1. Hearing Officer Services:

- a) Furnish Hearing Officers to conduct hearings and prepare and submit decisions in accordance with applicable provisions of the Monterey County Code for such hearings conducted under that authority. For hearings related to waste management regulations, specifically solid waste facilities and permits, Title 14 and Title 27 of the California Code of Regulations shall apply. For hearings related to hazardous materials regulations, specifically Hazardous Materials Business Plans, California Health and Safety Code sections 25508 and 25508.2 shall apply, as well as California Code of Regulations, Title 27, Section 15188.
- b) Waste Management hearings pursuant to Title 14 and Title 27 referenced above shall be conducted based on the procedures therein. The following requirements are illustrative of those contained in the above referenced titles, but do not amend or supersede those statutes:
  - From the date of issuance of a permit that imposes conditions that are inappropriate, as contended by the applicant, or after the taking of any enforcement action pursuant to Part 5 (commencing with Section 45000) by the enforcement agency, the enforcement agency shall hold a hearing, if requested to do so, by the person subject to the action. The enforcement agency shall also hold a hearing upon a petition to the enforcement agency from any person requesting the enforcement agency to review an alleged failure of the agency to act as required by this part, Part 5 (commencing with Section 45000), or Part 6 (commencing with Section 45030) or a regulation adopted by the department pursuant to this part, Part 5 (commencing with Section 45000), or Part 6 (commencing with Section 45030). A hearing shall be held in accordance with the procedures specified in Section 44310.
  - The hearing shall be initiated by the filing of a written request for a hearing with a statement of the issues.
  - If the hearing request is made by the person subject to the action, the request shall be made within 15 days from the date that person is notified, in writing, of the enforcement agency's intent to act in the manner specified.
  - If the hearing request is made by a person alleging that the enforcement agency failed to act as required by law or regulation pursuant to Section 44307, the person shall file a request for a

hearing within 30 days from the date the person discovered or reasonably should have discovered, the facts on which the allegation is based.

- The enforcement agency shall, within 15 days from the date of receipt of a request for a hearing, provide written notice to the person filing the request notifying the person of the date, time, and place of the hearing.
  - If that person fails to request a hearing or to timely file a statement of issues, the enforcement agency may take the proposed action without a hearing or may, at its discretion, proceed with a hearing before taking the proposed action.
  - The enforcement agency shall file its written response to the statement of issues filed by the person requesting the hearing with the hearing panel or the hearing officer, and provide a copy to the person requesting the hearing, not less than 15 days prior to the date of the hearing.
  - The hearing shall be held no later than 30 days after receiving the request for a hearing on the merits of the issues presented, in accordance with the procedures specified in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.
  - Within five days from the conclusion of the hearing, the hearing panel or hearing officer shall issue its decision. The decision shall become effective as provided in Section 45017.
- c) All procedural rulings and determination of factual and legal issues shall be made in accordance with such constitutional, statutory, and decisional law requirements as may be applicable to assure fair and legally sufficient hearings and the adoption of decisions which include appropriate and legally sufficient determinations of all factual and legal issues involved in the case.
- d) Hearing room facilities will be provided as mutually agreed upon. County will arrange for a hearing room and recording facilities for use on dates as agreed to by the Parties and will mail written notices to the parties as appropriate.
- e) Assigned Hearing Officers will be responsible for taking their own notes during hearings and for maintenance of the *official record*, including identification and filing of exhibits, and for submission of their decisions promptly upon completion of the hearing in final and complete typewritten form.
- f) Decisions and all documents and exhibits comprising the *official record* shall be delivered to the County within sixty (60) days after the hearing is concluded. The Hearing Officer assigned by The Center will digitally record each hearing on a CD or DVD and will deliver the recording to the County within sixty (60) days after the hearing is concluded. County shall

be responsible for providing copies of the record, including the audio recording, upon request by a party.

- g) County will not have the authority to select the Hearing Officer for any specific case. The Center will have sole authority and responsibility for assigning a Hearing Officer to conduct a hearing.
- h) The Hearing Officer assigned by The Center will conduct the hearings under the applicable codes, regulations, and/or other authorities, and will issue written decisions within the applicable timelines.
- i) All Hearing Officers assigned will have been admitted to practice before the courts of this State for at least five (5) years prior to his or her appointment as required by California Government Code 27724.
- j) In person hearing dates can be requested by calling or emailing The Center to arrange scheduling in accordance with timelines and other needs.
- k) Video conferencing hearing dates can be requested by calling or emailing The Center to arrange scheduling in accordance with timelines and other needs.
- l) Depending on the particular County Code, State Law, or other pertinent regulatory requirements for service of decisions, decisions may be sent directly to the Parties by the Hearing Officer, or they may be emailed in Word or PDF format to the appropriate County representative for service on the Parties. In the latter procedure, the County may not alter or amend the decision other than to place a date on the decision that matches the date the County actually serves the decision.
- m) County shall maintain the hearing calendar, ongoing hearing files, and provide hearing-related notices to the Parties and shall provide interpreters if necessary. Once a final decision is rendered County will store/maintain records in accordance with applicable law and County records retention policy.

## 2. Implementation of Administrative Hearing Services

- a) The Center will meet with the County to discuss the County's administrative hearing process at County's request.
- b) The Center will gain an understanding of the County's specific requirements for the role of a Hearing Officer.
- c) The Center will review the applicable County ordinances, resolutions, policies, etc.



PAYMENTS

The Center shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

1. Services of an Administrative Hearing Officer

\$200 per hour for services rendered with a \$1200 limit for each hearing (to include preparation, hearing time and travel at the IRS rate).

\$1,000 per quarter for administration of the hearing officer program.

The allocated total for the services of an Administrative Hearing Officer shall not exceed \$50,000 for the initial term of the Agreement.

2. Travel Costs

*Mileage: At the current Internal Revenue Service rate*

GRAND TOTAL OF COSTS ASSOCIATED WITH THE UTILIZATION OF AN ADMINISTRATIVE HEARING OFFICER SHALL NOT EXCEED THE AMOUNT OF \$50,000.

## Attachment to Exhibit A

### PROCEDURES FOR APPOINTMENT AND QUALIFICATIONS OF HEARING OFFICERS FOR HEARINGS ON PETITIONS RELATED TO LOCAL ENFORCEMENT AGENCY PROCEEDINGS

1. Pursuant to the provisions of the California Public Resources Code (PRC) concerning activities of the Local Enforcement Agency (LEA), including but not limited to those provisions set forth in PRC Sections 44308 et seq., the Monterey County Director of Health shall determine, consistent with the requirements set forth below, a proposed hearing officer, whose qualifications shall be set forth and presented to the Monterey County Board of Supervisors or City Council for consideration of appointment as hearing officer.
2. A hearing officer approved by the Monterey County Board of Supervisors shall conduct all proceedings in accordance with the applicable provisions set forth in the Public Resources Code.
3. For consideration as a hearing officer in the above described role, a hearing officer shall be a person who shall remain independent of the County of Monterey and who shall be impartial and shall not have any association in support of or against either the County of Monterey or any facility or facility operator subject to a Local Enforcement Agency hearing proceeding.
4. For consideration as a hearing officer, a person shall demonstrate experience and familiarity with the current law in the state of California concerning solid waste issues.
5. For consideration as a hearing officer, a person shall demonstrate to the satisfaction of the Monterey County Board of Supervisors or their designee that the person possesses a judicial demeanor consistent with the impartial conduct of any proceedings.
6. The Monterey County Board of Supervisors shall consider and take action on the recommendation received from the Monterey County Director of Health. Any such appointment shall be effective until further notice unless terminated earlier by either party with 30-day notice.
7. Additional hearing officers may be appointed who may serve on a rotational basis.



## PROCEDURES FOR ADJUDICATORY HEARINGS

### Section 1. Application

(a) The hearing procedures under this Article shall govern all hearings and appeals which the Hearing Officer is authorized or required to conduct pursuant to the California Public Resources Code (PRC). To the extent that the procedures set forth in this Article conflict with the PRC, the PRC shall control.

(b) Without limiting the generality of subsection (a), hearings conducted before the Hearing Officer shall be in accordance with PRC Section 44310.

### Section 2. Scope of Formal Review

The Hearing Officer shall hear and review an appeal of the LEA's administrative determination or a petition alleging the LEA's failure to act in accordance with the laws or regulations specified in PRC Section 44307, taking into account:

(a) All of the material on which LEA staff based its determination or its decision to not act, including state law and all other applicable laws;

(b) The reasons given by the appellant or the petitioner for requesting Hearing Officer review;

(c) Any additional relevant documentary and, testamentary material submitted by the appellant or the petitioner; and

(d) Any further information which the Hearing Officer in its discretion obtains by request or investigation at the proceedings in order to insure a fair, full and impartial review of the claim.

### Section 3. Conduct of the Hearing

Hearings shall not be conducted according to technical rules of evidence, however:

(a) Oral evidence shall be taken only on oath or affirmation;

(b) Admissibility of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state;

(c) Exclusion of evidence. The Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time;

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration;

(e) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing;

(f) All evidence must be part of the record and the Hearing Officer shall not conduct independent investigations or engage in off-the record conversations with witnesses or parties regarding the matter under consideration by the Hearing Officer;

(g) In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter related to solid waste, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the matter of such refutation to be determined by the Hearing Officer,

#### Section 4. Rights of Parties

Each party shall have the right:

(a) To call and examine witnesses on any matter relevant to the issues of the hearing;

(b) To introduce documentary and physical evidence;

(c) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing even though that matter was not covered in the direct examination. If an appellant does not testify on his or her behalf, he or she may be called and examined as if under cross-examination;

(d) To impeach any witness regardless of which party first called the witness to testify;

(e) To introduce rebuttal evidence;

(f) To be represented by any person who is lawfully permitted to so represent.

#### Section 5. Subpoenas

(a) The provisions of Article 11 of Chapter 4.5 of the California Government Code, Section 11450.05 et seq., entitled "Subpoenas," shall apply to the conduct of hearings held by the Hearing Officer;

(b) Without limiting the generality of subsection a, above, reference is made to the provisions of Government Code Section 11450.20 (a) which states: "Subpoenas and subpoenas duces tecum shall be issued by the agency [LEA] or the presiding officer at the request of a party or by the attorney of record for a party, in accordance with the Sections 1985 to 1985.4, inclusive of the Code of Civil Procedure;"

(c) The Hearing Officer shall be considered the presiding officer for purposes of enforcing the provisions of Government Code Section 11450.05 et seq.

(d) The provisions of Government Code Section 11450.05 et seq. in their current form are set forth in Appendix A.

#### Section 6. Findings and Order

(a) Within five (5) days following the conclusion of the hearing, the Hearing Officer shall make written findings of fact, based upon the evidence received at the hearing to support its decision and shall issue an order affirming, modifying, or overruling the determination or order of the LEA under appeal or the subject of the petition;

(b) The decision of the Hearing Officer shall be final and conclusive pursuant to PRC Section 45017. An appeal may be filed with CalRecycle pursuant to PRC Section 45030 then to the Superior Court pursuant to PRC Section 45040;

(c) The Secretary shall be charged with the responsibility of providing a copy of the Hearing Officer's decision to the parties. The Secretary shall provide a copy of the decision to the appellant or the petitioner by United States mail or by personal service at the address listed on the appeal or the petition.

#### Section 7. Record

A record of the entire proceedings before the Hearing Officer shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the Hearing Officer. A copy of the tape or transcript of the proceedings shall be available to all parties upon request and upon prepayment of the fee prescribed by the Monterey County Board of Supervisors.

#### Section 8. Continuances

To the extent permitted under the PRC, the Hearing Officer may grant continuances for good cause shown. All time limits specified herein may be extended upon a showing of good cause.

#### Section 9. Oaths

The Hearing Officer has the power to administer oaths and affirmations.