



County of Santa Cruz

OFFICE OF THE COUNTY COUNSEL

701 OCEAN STREET, SUITE 505, SANTA CRUZ, CA 950604068
(831) 454-2040 FAX: (831) 454-2115

DWIGHT L. HERR, COUNTY COUNSEL
CHIEF ASSISTANTS
Deborah Steen
Samuel Torres, Jr.

Assistants
Harry A. Oberhelman III
Marie Costa
Jane M. Scott
Rahn Garcia
Tamyra Rice
Pamela Fyfe
Ellen Aldridge
Kim Baskett
Lee Gulliver
Dana McRae

January 24, 2000
Agenda: February 1, 2000

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: Mobile Home Rent Adjustment Hearing Officer

Dear Members of the Board:

This is to recommend that the Board approve a new contract to engage the services of Attorney Austin B. Comstock as a Mobile Home Rent Adjustment Hearing Officer. Mr. Comstock previously served as a Hearing Officer on Mobile Home Rent Adjustment matters between 1990 to 1997. Currently, there is a request for a hearing regarding the Rodeo Mobile Estates Park. The other County hearing officers are not available to hear this matter due to conflicts of interest or other reasons. Mr. Comstock has previously heard a petition for this park and so is familiar with both the rent adjustment issues in general as well as the with this specific park.

IT IS THEREFORE RECOMMENDED that your Board approve the attached Independent Contractor Agreement to engage the services of Attorney Austin B. Comstock as a Mobile Home Rent Adjustment Hearing Officer, and authorize County Counsel to execute the Agreement on behalf of the County.

Very truly yours,
DWIGHT L. HERR, COUNTY COUNSEL

RECOMMENDED:

SUSAN A. MAURIELLO
County Administrative Officer

INDEPENDENT CONTRACTOR AGREEMENT

THIS CONTRACT is entered into the 15th day of December 1999, by and between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and AUSTIN COMSTOCK, hereinafter called CONTRACTOR. The parties agree as follows:

1. DUTIES. CONTRACTOR agrees to exercise special skill to accomplish the following result: conduct a hearing of General Rent Adjustment, Special Rent Adjustment and Reduction or Elimination of Services disputes and render a decision in accordance with the procedures and provisions of Chapter 13 .32 of the Santa Cruz County Code; and further to provide adequate clerical support to accomplish said result.

2. COMPENSATION. In consideration for CONTRACTOR accomplishing said result, COUNTY agrees to pay CONTRACTOR as follows: \$125.00 per hour of work performed by the Hearing Officer to accomplish the above described duties. Payment will be made to CONTRACTOR no more frequently than once a month on the basis of invoices for services rendered.

3. TERM. This Agreement shall commence December 15, 1999, and shall continue until terminated pursuant to Paragraph 4.

4. TERMINATION. Either party may terminate this Agreement upon giving the other party 30 days' written notice, the effective date of cancellation being the 30th day of said written notice. Special Counsel shall be entitled to the compensation earned prior to the date of termination, computed pro rata up to and including the date of termination.

5. INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS. CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of paragraphs 5 and 6 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

A. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

6. INSURANCE. CONTRACTOR, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at minimum compliance with the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be in excess of CONTRACTOR'S insurance coverage and shall not contribute to it.

A. Types of Insurance and Minimum Limits

(1) Worker's Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if the CONTRACTOR has no employees and certifies to this fact by initialing here AM.

7. EQUAL EMPLOYMENT OPPORTUNITY. During and in relation to the performance of this Agreement, CONTRACTOR agrees as follows:

A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition(cancer related), marital status, sex, sexual orientation, age (over 40), veteran status, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provision of this non-discrimination clause.

8. INDEPENDENT CONTRACTOR STATUS. CONTRACTOR and COUNTY have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COUNTY. CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) And all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONTRACTOR rather than COUNTY has the right to control the **manner** and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b)

CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (I) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that CONTRACTOR is an independent contractor.

By their signatures to this Agreement, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Agreement is in fact an independent contractor.

9. NONASSIGNMENT. CONTRACTOR shall not assign this Agreement without the prior written consent of the COUNTY.

10. RETENTION AND AUDIT OF RECORDS. CONTRACTOR shall retain records pertinent to this Agreement for a period of not less than five (5) years after final payment under this Agreement or until a final audit report is accepted by COUNTY, whichever occurs first. CONTRACTOR hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller, the Auditor General of the State of California, or the designee of either for a period of five (5) years after final payment under this Agreement.

11. PRESENTATION OF CLAIMS. Presentation and processing of any or all claims arising out of or related to this Agreement shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

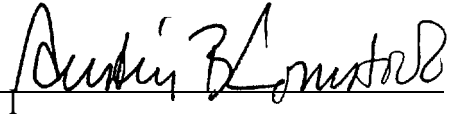
12. ATTACHMENTS. This Agreement includes the following attachments (identify by name or write “NONE”): None

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IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

CONTRACTOR

COUNTY OF SANTA CRUZ

By: 

By: _____

DWIGHT L. HERR
County Counsel


Address: 340 Soquel Avenue
Santa Cruz, CA 95062

Telephone: (83 1) 427-2727

APPROVED AS TO INSURANCE:

By: _____
Risk Management

APPROVED AS TO FORM:

By: 
County Counsel

DISTRIBUTION: County Administrative Office
Auditor-Controller
County Counsel
Risk Management
Contractor