

**EMPLOYEE DISCIPLINE HEARING OFFICER  
SERVICE AGREEMENT**

This Administrative Law Judge Service Agreement (the "Agreement") is effective in this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the West Valley City, a municipal corporation of the State of Utah, (City") and Clint Drake ("Drake").

**W I T N E S S E T H :**

**WHEREAS**, the City has need for an employee discipline hearing officer ("Hearing Officer") to hear employment related matters defined by West Valley City Code; and

**WHEREAS**, Drake is a licensed attorney with the necessary professional experience and training to perform Hearing Officer services for the City; and

**WHEREAS**, City desires to retain Drake in order to utilize his expertise and professional services as a Hearing Officer.

**NOW, THEREFORE**, for and in consideration of the mutual covenants made herein the parties hereby agree as follows:

**A G R E E M E N T :**

1. **Service Agreement.** Drake shall provide Hearing Officer services to the City with respect to employment matters as specifically defined by West Valley City Municipal Code § 3-11-102 ("Employment Matters") as may be assigned by the West Valley City Administration (the "Administrator"). These services shall be provided pursuant to the terms and conditions set forth in this Agreement.
2. **Services Provided by Drake.** Drake hereby agrees to provide the following services to the City:
  - a. Provide all Hearing Officer services referred to in this Agreement in accordance with West Valley Municipal Code Chapter 3-11, as amended, attached as Exhibit A.
  - b. Conduct administrative hearings and render decisions on all Employment Matters assigned by the Administrator.
  - c. Render all decisions in writing within the time required by West Valley City Municipal Code § 3-11-107.
  - d. The above described services shall be rendered by Drake on a part-time basis.
3. **Minimum Service Level.** Drake agrees to perform the services set forth above in a prompt and efficient manner, and in accordance with all applicable laws, rules and standards.

including all applicable ethical rules. Drake agrees that he will provide services at a level consistent with the manner and practices used by other Hearing Officers practicing in Utah.

4. **City Obligations.** As consideration for the services provided by Drake, the City agrees as follows:

- a. City shall pay Drake at the hourly rate of One Hundred Dollars (\$100.00) for services rendered under this Agreement. Said compensation shall be paid on a bi-weekly basis by the City, provided that Drake provides the City with an invoice, setting forth hours worked, not later than one week prior to the payment date. No additional benefits or compensation shall be paid to Drake. Drake agrees that he will not work more than twenty (20) hours in any two week City pay period without the express permission of the City.
- b. This is not an exclusive contract and nothing herein shall be construed to prohibit the City from concurrently using another company, person, or persons to provide Hearing Officer or similar services.
- c. Nothing contained in this Agreement shall be construed as guaranteeing Drake any minimum amount of work under this Agreement.

5. **Independent Contractor.**

- a. Drake shall be an independent contractor and as such, except as may be otherwise expressly set forth in this Agreement, shall have no authorization, expressed or implied, to bind City to any Agreements, settlements, liability, or understanding whatsoever. Drake agrees not to perform any acts as agent for City, except as expressly set forth in this Agreement.
- b. Drake shall be responsible for his own actions and the actions of his employees, agents or officials (if any), specifically including liability resulting therefrom, and also including but not limited to, employee, agent or official compensation, benefits, insurance, workers' compensation, and/or other applicable items.
- c. City shall not provide Drake with compensation insurance, unemployment compensation insurance, health insurance or workers' compensation insurance. Nothing in this Agreement shall be construed as entitling Drake to any benefits, compensation, retirement or protections provided by the City to City employees. The compensation provided in paragraph 4 of this Agreement shall be the total compensation paid by the City for the services provided by Drake. Drake acknowledges that the City will not withhold any federal, state or local taxes and that Drake is solely responsible for any and all compensation-based taxes that may be owing.

6. **Term.** The term of this Agreement shall be for one year. The Agreement may be renewed by the city by written notice not fewer than thirty days prior to the expiration of the

Agreement. The Agreement may be renewed for up to two additional one year terms at the City's sole discretion.

7. **Termination of Agreement.**

- a. Drake is expressly expected to be an independent adjudicator and shall not be subject to termination of the Agreement solely based on the outcome of the Employment Matters assigned.
- b. City may terminate this Agreement for cause at any time without prior notice by providing Drake with written notice of termination. Said notice shall describe Drake's breach of this Agreement. "Cause" is defined as a bad faith performance, unreasonable performance, lack of performance, or a violation or breach of the terms and conditions of this Agreement or federal, state, and municipal laws, rules, and regulations.
- c. In the event of termination for cause, fees shall be payable to Drake only for the time actually worked prior to the termination. Within 48 hours of the termination or expiration of this Agreement, Drake shall return to City any City equipment or documents that it may have in its possession.

8. **Indemnification.**

- a. City shall defend, hold harmless, and indemnify Drake from and against any and all loss, damages, liability, suits, claims, costs (including attorney's fees and court or other costs), and proceedings arising out of an alleged act or omission occurring during the performance of Drake's services as described in this Agreement, provided that Drake's acts were not fraudulent or malicious and that Drake was not under the influence of alcohol or any drug.
- b. Drake shall indemnify, and at the City's option defend, and hold harmless City and City's officials, agents, and employees from and against any and all loss, damages, injury, liability, suits, claims, costs (including attorney's fees and court or other costs), and proceedings arising out of any circumstances in which Drake will not be indemnified by City pursuant to paragraph (8)(a) above and for any violations of law as set forth in paragraph (9)(b).

9. **Applicable Laws.**

- a. Drake shall obey all laws, ordinances, regulations, and rules of the Federal, State, county, and municipal governments that may be applicable to Drake's services. Specifically, Drake shall comply with, but not be limited to, the Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration regulations, and the Americans with Disabilities Act.
- b. If Drake's actions constitute or cause a violation of federal, state, or local law, said actions shall constitute a breach of this Agreement, and Drake shall hold City harmless

from any and all liability arising out of or in connection with said violations, including any attorney's fees and costs incurred by City as a result of such violations.

c. This Agreement shall be construed under and in accordance with the laws of the State of Utah.

10. **Notices.** Any notice required by this Agreement may be served by mailing or delivering such notice to the following addresses:

If to the City:                West Valley City  
                                         Attn: Paul Isaac  
                                         3600 Constitution Boulevard  
                                         West Valley City, Utah 84119

With a copy to:                West Valley City  
                                         Attn: City Attorney  
                                         3600 Constitution Boulevard  
                                         West Valley City, Utah 84119

If to Drake:                    Clint Drake  
                                         5051 South 1900 West  
                                         Roy, UT 84067

Either party may change their address(s) upon written notice to the other party.

11. **City Representative.** The City hereby appoints the Assistant City Manager, or his designee, as the City's representative to assist in the administrative management of this Agreement, to ensure that the work to be performed by Drake is timely and adequately performed, and to provide for City approvals as may be required by this Agreement. The City's representative shall assist in coordinating, monitoring, and evaluating the services provided pursuant to this Agreement. Drake understands and agrees that the City's representative shall have no control over the means, methods, techniques, or procedures employed by Drake, it being clearly understood that the City is interested only in the results obtained under this Agreement, with the manner and means of obtaining those results being under the sole control of Drake.

12. **Attorney's Fees.** In the event of default hereunder, the defaulting party agrees to pay all costs incurred by the non-defaulting party in enforcing this Agreement, including reasonable attorney's fees, whether by in-house or outside counsel and whether incurred through initiation of legal proceedings or otherwise.

13. **Taxes and Assessments.** Drake shall pay all lawful taxes, assessments, or charges which at any time may be levied by the State, County, City, district, or any other tax or assessment levying body upon Drake's interest in this Agreement.

14. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and no statement, promise, or inducements made by either party or agents for either party, which are not contained in this written Agreement, shall be binding or valid; and this Agreement may not be enlarged, modified, or altered, except in writing signed by both parties. This Agreement supersedes and replaces any former agreement between the Drake and the City.
15. **Assignment.** This Agreement may not be transferred or assigned by Drake without the written permission of the City, which may be withheld at the City's sole discretion.
16. **Agreement Binding.** Drake covenants that the provisions of this Agreement shall be binding upon Drake's representatives, and agents.
17. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties. One or more waiver of any term, condition, or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.

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

WEST VALLEY CITY

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY RECORDER

APPROVED AS TO FORM WVC Attorney's Office	
By: _____	_____
Date: _____	_____

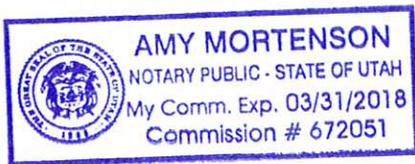
CLINT DRAKE

By: *Clint Drake*

Title: *Attorney*

State of Utah            )  
                                  :SS  
Weber County            )

On this 30 day of September, 2015, personally appeared before me Clint Drake, whose identity is personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he executed the same.



*Amy Mortenson*  
NOTARY PUBLIC