

AGREEMENT FOR LAND USE HEARING OFFICER SERVICES

THIS AGREEMENT is made and entered into effective as of April 1, 2023 (the “Effective Date”), by and between Polk County, a political subdivision of the State of Florida (the “County”) and Janet A. McDonald, Esquire, 1121 Rustic Ln, Lakeland, FL 33811 (the “Land Use Hearing Officer” or “LUHO”).

WHEREAS, Section 975 of the Polk County Land Development Code (the “Code”) authorizes the County to appoint qualified land use hearing officers who have the authority to conduct hearings regarding applications for variances and special exceptions, to decide appeals of administrative decisions and determinations, and to perform any other tasks or take any other action authorized by the Code, as may be amended, or by resolution of the Board of County Commissioners; and

WHEREAS, the LUHO has previously provided land use hearing officer services to the County pursuant to selection via the County’s procurement process; and

WHEREAS, the LUHO represents that she is an active member of, and in good standing with, the Florida Bar; and

WHEREAS, the County desires to contract with the LUHO for the services as further set forth herein, as such services will inure to the benefit of the citizens of Polk County.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the County and the LUHO agree as follows:

1. The recitals set forth above are true and correct and fully incorporated into the body of this Agreement. Capitalized terms used in this Agreement shall have the meaning ascribed in the Code, unless otherwise specifically defined herein.

2. The LUHO is hereby appointed to serve a term of three (3) years beginning on the Effective Date. This Agreement shall expire upon completion of the land use hearing officer services on March 31, 2026. Either party may terminate this Agreement without cause upon no

less than thirty (30) days prior written notice to the other party. In the event of such termination, the LUHO shall complete all pending orders prior to the termination date set forth in the notice.

3. The LUHO shall faithfully perform the duties set forth in the Polk County Land Development Code. During the term of this Agreement, the LUHO shall not (i) hold any other employment or contractual relationship whatsoever with Polk County, or hold other appointive or elective office or position in government during her term; or (ii) act as an agent or attorney in any proceeding, application or matter in the area of land use planning before any governmental authority of Polk County, involving property which is the subject of an application during the time the LUHO is in office. Further, the LUHO, and any firm with which she is or may be associated, is, for a period of one (1) year from the date of termination of this Agreement, expressly prohibited from acting as agent or attorney in any proceeding, application or matter before any commission, board, agent or other office of Polk County government, involving property which was the subject of any application during the time the LUHO was in office.

4. Compensation.

(a) The County shall compensate the LUHO at the rate of one hundred and fifty dollars (\$150) per hour for actual time spent at Hearings by the LUHO. "Hearings" shall mean a hearing set in accordance with the Code, noticed to the public, at which an agenda is followed. In the event that the actual time spent by the LUHO at Hearings on any given single date is less than two (2) hours, then the County shall nevertheless compensate the LUHO in the amount of \$300 for her services rendered at the Hearings on such date.

(b) Additionally, the County shall compensate the LUHO at the rate of one hundred and fifty dollars (\$150) per hour for actual time spent by the LUHO for any task completed outside of the hearing date that is germane to the hearing of a case including, without limitation, the review of the case file and staff report, research, site visits, and

drafting and issuing written orders (collectively, the “Ancillary Services”), subject to the following limitations:

(i) Compensation for Ancillary Services rendered by the LUHO related to applications for Variances, Special Exceptions and Temporary Special Exceptions shall be capped at three (3) hours per case.

(ii) Compensation for Ancillary Services rendered by the LUHO related to appeals of Administrative Decisions, Administrative Determinations including Non-Conforming Rights Determinations, and Waivers shall not be subject to any cap.

(iii) Compensation for Ancillary Services rendered by the LUHO related to any other type of Hearing or matter assigned to the LUHO pursuant to the Code, as may be amended, shall be subject to a cap of six (6) hours per case.

(c) Notwithstanding the caps set forth in subsections (b)(i) and (iii), above, the LUHO shall complete all necessary tasks outside of the Hearings to finalize orders for cases at no additional cost to the County, unless otherwise authorized to exceed the above-stated caps in writing by the Polk County Land Development Director.

(d) In the event that the Code is amended subsequent to the Effective Date of this Agreement to authorize Hearing Officers be assigned other types of quasi-judicial Hearings, cases and matters (in addition to Variances, Special Exceptions, Temporary Special Exceptions, Administrative Decisions, Administrative Determinations including Non-Conforming Rights Determinations, and Waivers), then the County shall compensate the LUHO for her attendance at an initial training meeting with County staff to review the

portions of the Land Development Code pertinent to such new assignment(s) at the hourly rate specified in subsection (a) above.

(e) The LUHO shall not be entitled to claim any reimbursable expenses under this Agreement.

5. The LUHO agrees to submit billing to the County no later than twenty-one (21) days after each hearing date in which services have been provided by the LUHO. The LUHO agrees to submit billing to the County that contains a faithful recitation of time spent to the nearest tenth of an hour. The LUHO agrees to include in billing submitted to the County pursuant to this Agreement, the land development case numbers, the names of the respective property owners, and the hearing date on which services were provided.

6. The LUHO agrees to maintain a system of bookkeeping and accounting which shall produce an adequate account and record of the services rendered pursuant to this Agreement. The County shall have the right to inspect and audit such books, accounts and records of the LUHO to determine their accuracy. If the County determines at any time the records of the LUHO do not allow for a proper audit of the services rendered to County, the County shall have the right to specify additional bookkeeping and accounting requirements which are reasonably necessary for a proper audit, and the LUHO shall implement same.

7. Billing and invoices shall be submitted to:

ATTENTION: Polk County Land Development Director
P.O. Box 9005, Drawer GM03
Bartow, Florida 33830
Ph.: 863.534.6792

8. To the extent applicable, the LUHO shall be subject to the provisions of Section 112.3145, Florida Statutes, insofar as they relate to local officers. Such financial disclosures shall be filed with the Polk County Supervisor of Elections. The failure to comply with the

provisions of this Section shall constitute just cause for immediate removal of the LUHO from office, without regard to the notice provision set forth in Section 2 above.

9. The LUHO shall disqualify herself from a particular case when it reasonably appears that she has a conflict of interest. When the LUHO disqualifies herself, the case shall be assigned by the County to another LUHO.

10. The LUHO shall not assign, sublicense, or otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the County.

11. This Agreement shall be construed in accordance with the laws of the State of Florida and venue shall lie in Polk County, Florida or in the Federal Middle District of Florida, Tampa Division, as appropriate. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of any other covenants, conditions or provisions contained herein.

12. None of the provisions of this Agreement are intended to create, nor shall be deemed or construed to create, any relationship between the County and the LUHO, other than that of independent parties contracting with each other solely for the purpose of effectuating the provisions of this Agreement. The parties hereto shall be considered to be independent, and neither of them, nor any of their respective representatives, employees or agents shall be construed to be the agent, employee, servant or representative of the other.

13. In providing all services pursuant to this Agreement, the LUHO shall abide by all statutes, ordinances, rules, and regulations pertaining to or regulating the provisions of such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement, and shall

entitle the County to terminate this Agreement immediately upon delivery of written notice of termination to the LUHO, without regard to the notice provision set forth in Section 2 above.

14. Public Records Law

(a) The LUHO acknowledges the County's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and comply in the handling of the materials created under this Agreement. The LUHO further acknowledges that the constitutional and statutory provisions control over the terms of this Agreement. In association with its performance pursuant to this Agreement, the LUHO shall not release or otherwise disclose the content of any documents or information that is specifically exempt from disclosure pursuant to all applicable laws.

(b) Without in any manner limiting the generality of the foregoing, to the extent applicable, the LUHO acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

(1) keep and maintain public records required by the County to perform the services required under this Agreement;

(2) upon request from the County's Custodian of Public Records or his/her designee, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if the LUHO does not transfer the records to the County; and

(4) upon completion of this Agreement, transfer, at no cost, to the County all public records in possession of the LUHO or keep and maintain public records required by the County to perform the service. If the LUHO transfers all public records to the County upon completion of this Agreement, the LUHO shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the LUHO keeps and maintains public records upon completion of this Agreement, the LUHO shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

(c) IF THE LUHO HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LUHO'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS

AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:

**RECORDS MANAGEMENT LIASON OFFICER
POLK COUNTY
330 WEST CHURCH ST.
BARTOW, FL 33830
TELEPHONE: (863) 534-7527
EMAIL: RMLO@POLK-COUNTY.NET**

15. This Agreement contains all of the terms and provisions agreed upon by the parties. Any alterations variations, amendments, waivers, or modifications must be in writing and duly executed by the parties.

16. The Parties acknowledge that this Agreement and all the terms and conditions contained herein have been fully reviewed and negotiated by the Parties. Accordingly, any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

ATTEST:

STACY M. BUTTERFIELD
CLERK OF THE BOARD

Polk County, a political subdivision
of the State of Florida

By: _____
Deputy Clerk

By: _____
George Lindsey, III, Chairman
Board of County Commissioners


Date Signed By County _____

Reviewed as to form and legal sufficiency:


County Attorney's Office Date 3/8/23


Print Name: Thomas McDonald
Witness #1


Print Name: Lisa Conran
Witness #2


Janet A. McDonald, Esquire
3/8/2023