

**RENT ABATEMENT HEARING EXAMINER  
2010 SERVICES AGREEMENT**

The parties to this agreement, the City of Madison, a municipal corporation, (hereinafter "City"), and Thomas Boykoff, an individual, (hereinafter "Contractor"), hereby agree as follows:

**I. PURPOSE**

The purpose of this Agreement is to provide for a Rent Abatement Hearing Examiner to conduct hearings, to mediate abatement disputes, and to prepare decisions in rent abatement proceedings conducted in accordance with Chapter 32 of the Madison General Ordinances.

**II. TERM OF AGREEMENT**

A. This Agreement shall commence on January 1, 2010 or the date this Agreement is signed by the Mayor, whichever date is later, and shall terminate on December 31, 2010; however, it is agreed that all services commenced by the Contractor prior to December 31, 2010 must be completed by January 20, 2010, and that time is of the essence in the performance of services under this Agreement.

B. The City reserves the right to terminate this Agreement at any time for the convenience of the City upon fifteen (15) days written notice to the Contractor. In the event of termination, the City will pay the Contractor for all satisfactorily performed services completed prior to termination of this Agreement.

C. The Contractor shall not terminate this Agreement prior to completion of all services, except upon thirty (30) days prior written notice to the City.

D. In the event the Contractor shall default in any of the terms of this Agreement, and any such default shall continue unheeded for a period of ten (10) days after written notice thereof to the Contractor, the City may at its option and in addition to all other rights and remedies which it may have at law or in equity against the Contractor immediately terminate this Agreement.

E. Further, in the event of lapse or cancellation of insurance policies or coverage and protection as required by this Agreement the City may, without notice of default, declare this

Agreement terminated in addition to all other rights and remedies which it may have at law or in equity against the Contractor.

### **III. SCOPE OF SERVICES**

During the term of this Agreement, the Contractor will act as Rent Abatement Hearing Examiner in all matters assigned to him by the Rent Abatement Clerk. The Contractor shall perform all the duties of Rent Abatement Hearing Examiner according to the provisions of the Rent Abatement Ordinance, Sections 32.04 and 32.06, Madison General Ordinances, and the rules adopted by the Housing Committee pursuant thereto, including: drafting findings of fact and conclusions of law; calculating percentages and actual amounts of abatement; writing memorandum decisions and other documents as necessary; and conducting orderly and impartial rent abatement hearings and reconsideration hearings at a time determined by and at a site provided by the City.

Prior to hearings, the Contractor will review informational packets on each case, check ordinance citations and possible abatement ranges for each alleged violation and identify facts necessary to establish which abatement range applies; issue subpoenas at the request of parties; and hold prehearing conferences with parties to clarify or simplify issues and, upon the request of the parties, function as a mediator to encourage voluntary settlement.

The Contractor will maintain files and records for each case as necessary. For each contested hearing, Contractor will ensure that the proceedings are recorded so that a transcript of the proceedings can be made available if necessary.

The Contractor will keep current in legal literature and participate in training at the request of the Housing Committee in order to maintain his expertise in rent abatement and administrative law matters.

The Contractor warrants that he is licensed as an Attorney in the State of Wisconsin, that he is experienced and knowledgeable in administrative law and procedure, in the conduct of contested hearings, in legal research and the drafting of necessary legal documents and papers, and in making the requisite mathematical calculations to determine amounts and percentages of abatement. The

Contractor further warrants that he has a working knowledge of residential rental property maintenance, building inspection procedures and landlord/tenant relations.

#### **IV. COMPENSATION AND METHOD OF PAYMENT**

A. Rate of Compensation. The City shall pay the Contractor for services performed under this Agreement according to the following schedule: Sixty-Five Dollars per hour (\$65.00/hour) for hearing preparation, pre-hearing conferences, presiding at hearings and decision writing with a Two Hundred Dollars (\$200.00) cap per hearing. Petitions for reconsideration and reconsideration hearings will be considered separately with a Two Hundred Dollars (\$200.00) cap per reconsideration. The City will pay the Contractor for Training of an alternate Rent Abatement Hearing Examiner at a rate of Sixty-Five Dollars per hour (\$65.00/hour), with a cap of \$300.00 per alternate examiner. The City shall pay the Contractor within fifteen (15) days of Contractor submitting to the Rent Abatement Clerk a detailed statement of services performed and number of total minutes spent in performing such services. These total amounts may be exceeded if the case exceeds the maximum time up to an additional \$120.00 per Case or Petition for Reconsideration with approval from the Building Inspection Division Director.

In addition, the City will pay the Contractor premium expenses in the following amounts: not to exceed Five Hundred Dollars (\$500.00) upon submission of proof of insurance as set forth in VII B. infra; a further amount not to exceed One Thousand One Hundred Fifty Dollars (\$1,150.00) in the event this Agreement is not renewed or is terminated by either party and proof of insurance coverage for a three year period following completion of the work required is submitted as set forth in VII. B. infra. If after the City reimburses the contractor for premium expenses, the contractor received a rebate from the insurance carrier, the contractor shall repay that rebate amount to the City by delivering it to the Building Inspection Division Director.

B. Independent Contractor Status. It is agreed that Thomas Boykoff is an independent contractor, and not an employee of the City and that any persons the Contractor employs to perform services for him under this Agreement are employees of the Contractor and are not employees of the

City of Madison. The Contractor hereby agrees to furnish the City with his taxpayer identification number or his social security number prior to commencement of work under this Agreement. Failure or delay in furnishing social security numbers or taxpayer identification numbers may result in the withholding of amounts due to the Contractor from the City. The Contractor is informed that as an independent contractor he may have a responsibility to make estimated tax returns, file tax returns and pay income taxes and make social security payments on the amounts received under this Agreement and that no amounts will be withheld from payments made to Contractor for these purposes and that payment of taxes and making social security payments are solely the responsibility and obligation of the Contractor. The Contractor is further informed that he may be subject to civil and/or criminal penalties if he fails to report income and pay taxes and social security taxes on any amounts received under this Agreement.

**V. ASSIGNABILITY**

The Contractor shall not assign or subcontract any interest or obligation to perform services under this Agreement.

**VI. CONFLICT OF INTEREST**

Contractor warrants and certifies that he will not participate as Hearing Examiner in any matter in which he has any personal or pecuniary interest or relationship with any of the parties. Contractor further warrants and certifies that no official or employee of the City of Madison has any personal or pecuniary interest in the proceeds of this Agreement.

**VII. INDEMNIFICATION AND INSURANCE**

A. Indemnification. The Contractor agrees to indemnify, defend, and save harmless the City of Madison, its officers, agents, officials and employees from and against all loss or expenses (including costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the

Contractor's acts or omissions in the performance of this Agreement, whether caused by or contributed by the City or its agents or employees.

B. Insurance. The Contractor shall maintain during the term of this Agreement, the following insurance coverage's:

1. Worker's Compensation coverage, if required by the Wisconsin Statutes.
2. Professional errors and omission policy with limits of Two Hundred Fifty Thousand (\$250,000.00) per occurrence.

Certificates of insurance shall be filed with the City before commencement of any work undertaken pursuant to this Agreement. All insurance policies shall be issued by companies authorized to do business in the State of Wisconsin. Insurance coverage provided on a claims made basis shall be maintained for three (3) years following completion of the work required under this Agreement. At least thirty (30) days' notice must be given to the City of any cancellation or material change in any insurance policy. In the event that the insurance coverage's required herein are not maintained, the City shall have the right in addition to any other remedies to terminate this Agreement even if this act of default has been remedied at the time of receipt of the City's notice of cancellation of the coverage.

#### **VIII. AMENDMENT**

This Agreement may be amended only by written Agreement of the parties.

#### **IX. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

The Contractor shall be responsible for full compliance with all applicable federal, state and local laws and regulations.

#### **X. DOCUMENTS AND MATERIALS PROPERTY OF THE CITY**

All of the documents, materials, files, exhibits, and other records which the Contractor prepares or receives while performing services under this Agreement are the sole property of the City. The Contractor will not publish any such materials or use them for any research or publication, other than work required by this Agreement, without the written permission of the City.

## **XI. SEVERABILITY**

It is mutually agreed that, in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal, or unenforceable, it is the intention of the parties that all other provisions of this Agreement remain in full force and effect.

## **XII. NON DISCRIMINATION**

In the performance of work under this Agreement, the Contractor agrees not to discriminate against any City of Madison employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status.

## **XIII. GOVERNING LAW**

This Agreement shall be governed by and construed, interpreted and endorsed in accordance with the laws of the State of Wisconsin.

## **XIV. NO WAIVER**

No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Contractor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event of default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

## **XV. CONSTRUCTION OF AGREEMENT**

This Agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge, or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties. The entire Agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof.

## XVI. NOTICES

All notices to be given under the terms of this Agreement shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

FOR THE CITY:

George Hank, Director  
Building Inspection Division  
Room LL-100 Madison Municipal Bldg.  
215 Martin Luther King, Jr. Blvd.  
Madison, Wisconsin 53703

FOR THE CONTRACTOR:

Thomas Boykoff  
221 S. High Point Road #305  
Madison, Wisconsin 53717

IN WITNESS WHEREOF, the parties hereto have set their hands as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Thomas Boykoff,  
Rent Abatement Hearing Examiner

**CITY OF MADISON, WISCONSIN**  
a Wisconsin Municipal Corporation

David J. Cieslewicz, Mayor \_\_\_\_\_ Date \_\_\_\_\_

City Clerk \_\_\_\_\_ Date \_\_\_\_\_

**APPROVED:**

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Dean Brasser  
City Comptroller

Date

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Michael P. May  
City Attorney

Date

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Risk Manager

Date