

**MIDVALE CITY, UTAH  
RESOLUTION NO. 2015-R-46**

**A RESOLUTION CONFIRMING THE RE-APPOINTMENT OF MARK E.  
KLEINFELD TO CONTINUE SERVING AS MIDVALE CITY'S  
APPEALS AND VARIANCE HEARING OFFICER**

**WHEREAS**, pursuant to the Utah Code, Municipal Land Use, Development, and Management Act, Midvale City is required to establish one or more appeal authorities to hear and decide variances and appeals regarding the City's land use ordinances; and

**WHEREAS**, Midvale City, through Ordinance No. 2012-09, has created an Appeals and Variance Hearing Officer (Hearing Officer) position to fulfill these duties; and

**WHEREAS**, in December 2012, pursuant to Section 17-5-3 of the Midvale Municipal Code, the Mayor, with the advice and consent of the City Council, appointed Mr. Mark E. Kleinfeld to serve a two-year term in this position; and

**WHEREAS**, Mr. Kleinfeld has served the City well in this capacity, performing his duties in a professional, reliable and fair manner; and

**WHEREAS**, the City Attorney and Community Development Director have recommended to the Mayor the re-appointment of Mark E. Kleinfeld to continue to fill this position for an additional two-year term; and

**WHEREAS**, the Mayor desires to re-appoint Mr. Kleinfeld to continue serving as the City's Appeals and Variance Hearing Officer, and is requesting the advice and consent of the City Council on this re-appointment; and

**WHEREAS**, Mr. Kleinfeld has expressed a desire to continue in this role.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of Midvale City, Utah:

**SECTION 1.** The City Council hereby consents to and confirms the Mayor's re-appointment of Mark E. Kleinfeld as Midvale City's Appeals and Variance Hearing Officer for an additional two-year term through December 2016.

**SECTION 2.** This Resolution shall take effect immediately.

PASSED AND APPROVED this 15<sup>th</sup> day of September, 2015.

JoAnn B. Seghini  
JoAnn B. Seghini, Mayor

ATTEST:

Rori Andreason  
Rori Andreason, MMC  
City Recorder



Voting by City Council  
Stephen Brown  
Paul Glover  
Paul Hunt  
Wayne Sharp  
Quinn Sperry

"Aye"

✓  
✓  
✓  
✓  
✓

"Nay"

## HEARING OFFICER SERVICES AGREEMENT

This Agreement (this "Agreement") is made effective September 16, 2015 by and between Midvale City, a municipal corporation of the State of Utah (the "City"), and Mark E. Kleinfield (the "Hearing Officer"), 2450 East 3700 North, Layton, Utah 84040.

### RECITALS

- A. The Hearing Officer is an attorney licensed to practice law in the State of Utah and is in the business of providing legal services and has the experience in conducting administrative matters.
- B. The City is in the need of an appeal authority and hearing officer.
- C. The Midvale City Council appointed the Hearing Officer at its regular meeting on September 15, 2015.
- D. The City desires to retain the Hearing Officer to provide services for the City, and the Hearing Officer desires to provide services on the terms and conditions specified in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises, mutual covenants and undertakings, the parties hereby agree as follows:

Section 1. Scope of Services to be Provided. Throughout the term of this Agreement, the Hearing Officer shall provide services requested or needed by the City (the "Legal Services"). The Legal Services to be provided hereunder shall include conducting administrative hearings pursuant to the Midvale Municipal Code, specifically Chapters 7.02 and 17-5.

Section 2. Fees for Legal Services and Reimbursement Expenses. Except for reimbursement for service of process as described below, as full compensation for Legal Services (including all cost and expenses) rendered by the Hearing Officer pursuant to this Agreement, the City shall pay the Hearing Officer the amount of \$250.00 per hearing held or \$50.00 per hearing scheduled but later cancelled. The parties understand that such amount is based on anticipated time to be devoted to City matters.

Section 3. Renewal and Non-funding.

(a) This Agreement shall become effective on the date hereof and terminate at 11:59:59pm on December 31, 2016, provided, however, upon the consent of the parties hereto and subject to the right to terminate as provided herein, this Agreement may be extended and renewed for one additional two-year term upon such conditions, including fees for services, as shall be negotiated between the parties.



(b) The City and Hearing Officer acknowledge that funds are not presently available for the performance of this Agreement beyond the end of the City's current fiscal year, which is June 30, 2016. The City's obligation for performance of this Agreement beyond that date is contingent upon funds being appropriated for payment due and providing the Legal Services under this Agreement. If no funds or insufficient funds are appropriated and budgeted, or if there is a reduction in appropriations due to insufficient revenue, resulting in insufficient funds for payments due or about to become due under this Agreement, then this Agreement shall create no obligation on the City as to such fiscal year (or succeeding fiscal year), but instead shall terminate and become null and void on the first day of the fiscal year for which funds were not budgeted and appropriated or in the event of a reduction in appropriation, on the last day before the reduction becomes effective (except as to those portions of payments herein then agreed upon for which funds are appropriated and budgeted). Said termination shall not be construed as a breach of or default under this Agreement and said termination shall be without penalty, additional payment, or other changes of any kind whatsoever to the parties, and no right or action or damages or other relief shall accrue to the benefit of the other party as to this Agreement, or any portion thereof, which may so terminate and become null and void.

Section 4. Assignment and Delegation. The Hearing Officer shall not assign or delegate the performance of his duties under this Agreement without the City's prior written approval.

Section 5. Employment Status.

(a) Official Status. The Hearing Officer shall be an independent contractor and not an employee of the City.

(b) Salary and Wages. Except as otherwise specified in Section 2 above, the City shall not have any obligation or liability for the payment of any salary or other compensation to personnel assisting the Hearing Officer in providing the Legal Services.

Section 6. Termination. Notwithstanding anything to the contrary, either party may terminate this Agreement without cause upon 180 days prior written notice to the other party, or the City may terminate this Agreement for significant violation of the Rules of Professional Conduct upon notice by the City to the Hearing Officer.

Section 7. Office and Clerk Assistance. The City shall provide office space, office furniture as it deems necessary, and a phone line and Internet connection, but shall not provide office services, clerk assistance or other office-type support for the Hearing Officer with respect to performing the Hearing Officer's Legal Services.

Section 8. Alcohol and Drug-free Work Place. All personnel, during such time as they provide the Hearing Officer's Legal Services, shall not be under the influence of alcohol, and drug or combined influence of alcohol and any drug to the degree that renders the person incapable of safely providing Legal Services. Further, all personnel, during such time that they provide the Hearing Officer's Legal Services, shall not have sufficient alcohol in their body, blood or on their breath that would constitute a violation of Utah Code §41-6a-502 (without

giving any consideration to or establishing the requirement of operating or being in physical control of a vehicle) or any measurable controlled substance in their body that would constitute a violation of Utah Code §41-6a-517 (without giving any consideration to or establishing the requirement of operating or being in physical control of a vehicle).

Section 9. Notice. Any required notice or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the parties as set forth below:

City: City Administrator  
7505 South Holden Street  
Midvale, Utah 84047

With a copy to: City Attorney  
7505 South Holden Street  
Midvale, Utah 84047

Section 10. Title and Captions. All sections or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

Section 11. Pronouns and Plurals. Whenever the context may require, any pronoun used herein shall include the corresponding masculine or feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

Section 12. Applicable Law. The provisions hereof shall be governed by and construed in accordance with the laws of the State of Utah.

Section 13. Integration. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining hereto.

Section 14. Time. Time is the essence thereof.

Section 15. Survival. All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

Section 16. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon breach thereof shall constitute a waiver of any such breach of such or any other covenant, agreement, term or condition. Any party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party. No



waiver shall affect or alter the remainder of this Agreement, but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

Section 17. Rights and Remedies. The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions hereof.

Section 18. Severability. In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

IN WITNESS WHEREOF, the City caused this Agreement to be signed by its Mayor and attested by its Recorder and delivered. The Hearing Officer has caused the same to be signed and delivered.

MIDVALE CITY

By JoAnn B. Seghini  
JoAnn B. Seghini, Mayor

ATTEST: Rori L. Andreason  
Rori Andreason, MMC  
City Recorder



APPROVED AS TO FORM:

Chad Woolley  
Chad Woolley, City Attorney

HEARING OFFICER

By Mark E. Kleinfeld  
Mark E. Kleinfeld, Attorney at Law