

RESOLUTION NO. 2023 - 549

A RESOLUTION APPOINTING RAYMOND A. BATTEN, JSC (RET.) AS HEARING OFFICER FOR A PENDING POLICE DEPARTMENT INTERNAL AFFAIRS DISCIPLINARY MATTER.

WHEREAS, the Council of the City of Vineland determined that a need exists to retain a hearing officer relating to a certain police department internal affairs disciplinary hearing; and

WHEREAS, the Honorable Raymond A. Batten, JSC, (Ret.), associated with the law firm Archer & Greiner, P.C., has agreed to accept the engagement pending authorization by the governing body; and

WHEREAS, Richard P. Tonetta, Esq. City Solicitor has determined that the anticipated value of the contract will not exceed \$17,500.00; and

WHEREAS, Susan Baldosaro, Chief Financial Officer further certifies that the referenced dollar amount is available through the 2023 budget. The maximum dollar value is based on a reasonable estimate of the goods and services required over the contract term, and the City of Vineland is not obligated to spend that amount.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Vineland that the Mayor is authorized to execute a Professional Services Agreement by and between the City of Vineland and Raymond A. Batten, JSC (Ret.) to conduct the hearing of the aforementioned matter in the form as attached hereto and made a part hereof.

BE IT FURTHER RESOLVED that this contract be awarded pursuant to the New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.

BE IT FURTHER RESOLVED that Notice of this Resolution shall be published in the official newspaper of the City of Vineland as required by law within ten (10) days of passage and this Resolution and the Contract shall be available for review in the Clerk's Office.

Adopted:

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President of Council

ATTEST:

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City Clerk

## **HEARING OFFICER RETENTION AGREEMENT**

This Retention Agreement (hereinafter “Agreement”) is made by, between, and among the Hon. Raymond A. Batten (Ret.) (herein, the “Hearing Officer”) and the City of Vineland (“City” or “Vineland”) (collectively, the “Parties” or, individually, a “Party”).

**WHEREAS**, the City of Vineland is in need of a hearing officer to conduct a neutral and impartial police hearing involving Vineland City Police Chief Rudolph Beu, Captain Adam Austino and Lt. Thomas Riordan under the Police Tenure of Office Act, N.J.S.A. 40A:14-147, et al.; and

**WHEREAS**, the City, on information and advice of counsel, deems the Hearing Officer to be qualified to conduct the aforementioned police hearing; and

**WHEREAS**, the Hearing Officer will conduct the hearing impartially and objectively in accordance with governing legal and evidentiary standards, whereupon the Hearing Officer will render a decision for review and consideration by the governing body;

**NOW**, for and in consideration of the agreements, covenants and conditions herein contained, the adequacy and sufficiency of which are hereby expressly acknowledged by the Parties hereto, the Parties agree as follows:

### **1. TERMS OF RETENTION.**

- (a) **Payment.** Subject to appropriate review and ratification by the City, the Hearing Officer will be paid at the rate of \$425.00 per hour for services as a Hearing Officer. Invoices of the Hearing Officer shall be sent directly to the City Clerk. In connection with the execution of this Agreement, the Hearing Officer will provide a W-9. Should any further documentation be needed by the City for purposes of this engagement, the Hearing Officer will provide same in a prompt manner. The City will make best efforts to ensure prompt payment for services rendered.
- (b) **Vendor.** The Hearing Officer will serve as a vendor for the City of Gloucester and shall abide by any and all rules, requirements, and regulations for the performance of duties as same. It is anticipated that the value of this contract will not exceed \$17,500.00, and therefore, under the New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-5, an award for professional services may be made without competitive bidding.
- (c) **Taxes.** The City shall not be responsible for any tax withholdings and shall not be subject to any liability for any alleged failure to make necessary withholdings. The City shall be held harmless in this regard.
- (d) **Reasonable Diligence.** The Hearing Officer shall execute the duties of Hearing Officer with reasonable diligence and promptness and in compliance with all applicable professional standards.

- (e) **Termination.** This Agreement applies to the police hearing involving Chief of Police Rudolph Beu, Captain Adam Austino and Lt. Thomas only and shall not be extended to other police hearings involving the City of Vineland.

2. **APPLICABLE LAW.** This Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey. Any action to enforce the terms of this Agreement shall be venued in the Cumberland County, Superior Court of New Jersey and/or the Department of Administrative Law of the State of New Jersey, Civil Service, as appropriate.

3. **INDEMNIFICATION.** The parties agree that the City of Vineland shall indemnify and hold harmless the Hearing Officer from any and all liability as may be incurred consequent to the fulfillment of the terms, provisions and consequences of execution and fulfillment of this contract, including, without limitation, costs of defense as to any claims and/or litigation against the hearing officer for service in that capacity.

4. **SEVERABILITY.** The parties agree that if any court declares any portion of this Agreement unenforceable, the remaining portion shall be fully enforceable.

5. **FURTHER ASSURANCES.** The Parties agree to execute any additional documents reasonably necessary to effectuate this Agreement.

6. **NO WAIVER.** The delay or failure of a Party to exercise any right, power or privilege hereunder or failure to strictly enforce any breach or default shall not constitute a waiver with respect thereto and no waiver of any such right, power, privilege, breach or default on any one occasion shall constitute a waiver thereof on any subsequent occasion unless clear and express notice thereof in writing is provided.

7. **ACKNOWLEDGMENT.** This Agreement is executed voluntarily and knowingly, and all Parties warrant that they have had sufficient time to review same.

**EXECUTED AND AGREED TO:**

\_\_\_\_\_  
Raymond A. Batten, Ret.  
Hearing Officer

Date: \_\_\_\_\_ Hon.

\_\_\_\_\_  
City of Vineland, Cumberland County

Date: \_\_\_\_\_