

**PROFESSIONAL SERVICES AGREEMENT
FOR
HEARING EXAMINER SERVICES**

This Professional Services Agreement ("Agreement") is effective as of the date of the last authorizing signature affixed hereto. The parties ("Parties") to this Agreement are the City of Olympia, a Washington municipal corporation ("City"), and attorney, Mr. Mark C. Scheibmeir, (hereinafter "Hearing Examiner"), and singularly shall be referred to as a "Party."

A. The City seeks the temporary professional services of a skilled independent Hearing Examiner capable of working without direct supervision, in the capacity of Hearing Examiner; and

B. The Hearing Examiner has the requisite skill and experience necessary to provide such services.

NOW, THEREFORE, the Parties agree as follows:

1. Services.

A. The City of Olympia hereby appoints attorney, Mr. Mark C. Scheibmeir, as the City's Hearing Examiner. The Hearing Examiner shall have the authority to hear all land use regulatory cases identified in Olympia Municipal Code (OMC) Chapters 18.82 and 18.75, as well as any code enforcement action where the Hearing Examiner has the authority in the OMC to hear such actions. This Agreement is the complete agreement between the parties. The City Manager and his designee has the authority of day-to-day administration of this Agreement.

B. The City shall provide "clerk" services for the Hearing Examiner, which shall be limited to: duties imposed by the Olympia Municipal Code (staff reports, public notice); arranging for the time and date of hearings and other proceedings such as teleconferences and virtual Zoom or pre-hearing meetings when deemed appropriate by the Hearing Examiner; maintaining the record of a case, and providing the Hearing Examiner with a copy of the record, as requested by the Hearing Examiner; collecting and forwarding public comment as provided by code and unless otherwise specified by the Hearing Examiner; and making a recording of hearings and appeal proceedings.

2. Term.

The term of this Agreement shall commence upon the effective date of this Agreement and shall continue until the completion of the Services, but in any event no later than April 30, 2024 ("Term"). This Agreement may be extended once for an additional two years upon the mutual written agreement of the City and the Hearing Examiner.

3. Termination.

Prior to the expiration of the Term, this Agreement may be terminated immediately, with or without cause by the City. The Hearing Examiner shall have the option to terminate this Agreement after thirty (30) days upon delivery of written notice to the City.

4. Compensation.

A. Hearing Examiner's Fee. An amount not to exceed the sum of Two Hundred and Twenty-Five and 00/100 Dollars (\$225.00) per hour.

B. Method of Payment. Payment by the City for the Services will only be made after the Services have been performed, ***which invoice shall specifically describe the Services performed, the name of Consultant's personnel performing such Services, the hourly labor charge rate for such personnel***) and the same is approved by the appropriate City representative. Payment shall be made on a monthly basis, within thirty (30) days after receipt of such voucher or invoice.

C. Consultant Responsible for Taxes. The Hearing Examiner shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.

5. Contract Managers.

The Parties agree that all formal communications about this Agreement, contract deliverables, accomplishments, regulatory oversight, invoicing and requests for amendment must be coordinated directly between the Hearing Examiner and City's Contract Manager unless otherwise approved in writing by the City. The contract managers are identified as follows:

Hearing Examiner

Mark C. Scheibmeir
Hillier, Scheibmeir, Kelly & Satterfield, P.S.
299 NW Center Street, Chehalis WA 98532
mark@centerstlaw.com
360.748.3386

City of Olympia

Tim Smith
Deputy Director
PO Box 1967, Olympia WA 98507-1967
tsmith@ci.olympia.wa.us
360.570.3915

6. Compliance with Laws.

The Hearing Examiner shall comply with and perform the Services in accordance with all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, standards and policies, as now existing or hereafter adopted or amended.

7. Assurances.

The Hearing Examiner affirms that he has the requisite training, skill and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and

governmental entities, including but not limited to the Washington State Bar Association, and being registered to do business in the City of Olympia by obtaining a City of Olympia business registration.

8. Independent Contractor/Conflict of Interest.

It is the intention and understanding of the Parties that the Hearing Examiner is an independent contractor and that the City shall be neither liable nor obligated to pay the Hearing Examiner sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Hearing Examiner shall pay all income and other taxes due. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Hearing Examiner, shall not be deemed to convert this Agreement to an employment contract. It is recognized that the Hearing Examiner may be performing professional services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with the Hearing Examiner's ability to perform the Services. The Hearing Examiner agrees to resolve any such conflicts of interest in favor of the City.

9. Equal Opportunity Employer.

A. In all Hearing Examiner services, programs or activities, and all Hearing Examiner hiring and employment made possible by or resulting from this Agreement, there shall be no unlawful discrimination by the Hearing Examiner or by the Hearing Examiner's employees, agents, subcontractors or representatives against any person based on any legally protected class status including but not limited to: sex, age (except minimum age and retirement provisions), race, color, religion, creed, national origin, marital status, veteran status, sexual orientation, gender identity, genetic information or the presence of any disability, including sensory, mental or physical handicaps; provided, however, that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the performance of the essential functions required of the position.

This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Hearing Examiner shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding nondiscrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, in the case of the Hearing Examiner's breach, may result in ineligibility for further City agreements.

B. In the event of the Hearing Examiner's noncompliance or refusal to comply with the above nondiscrimination plan, this Agreement may be rescinded, canceled, or terminated in whole or in part, and the Hearing Examiner may be declared ineligible for further agreements or contracts with the City. The Hearing Examiner, shall, however, be given a reasonable time in which to correct this noncompliance.

C. To assist the City in determining compliance with the foregoing nondiscrimination requirements, the Hearing Examiner must complete and return the *Statement of Compliance with Nondiscrimination* attached as Exhibit A. If the contract amount is \$50,000 or more, the Hearing Examiner shall execute the attached Equal Benefits Declaration - Exhibit B.

10. Confidentiality.

The Hearing Examiner agrees not to disclose any information and/or documentation obtained by the Hearing Examiner in performance of this Agreement that has been expressly declared confidential by the City. Breach of confidentiality by the Hearing Examiner will be grounds for immediate termination.

11. Indemnification/Insurance.

A. Indemnification / Hold Harmless. The Hearing Examiner shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Hearing Examiner in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Hearing Examiner and the City, its officers, officials, employees, and volunteers, the Hearing Examiner's liability hereunder shall be only to the extent of the Hearing Examiner's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Hearing Examiner's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

B. Insurance Term. The Hearing Examiner shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Hearing Examiner, his agents, representatives, or employees.

C. No Limitation. The Hearing Examiner's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Hearing Examiner to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

D. Minimum Scope of Insurance. The Hearing Examiner shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as ISO occurrence form (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.

2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, stop gap liability, personal injury and advertising injury. The City shall be named as an additional insured under the Hearing Examiner's Commercial General Liability

insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Hearing Examiner's profession.

E. Minimum Amounts of Insurance. The Hearing Examiner shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence and \$2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

F. Other Insurance Provisions. The Hearing Examiner's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Hearing Examiner's insurance and shall not contribute with it.

G. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

H. Verification of Coverage. The Hearing Examiner shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Hearing Examiner before commencement of the work.

I. Notice of Cancellation. The Hearing Examiner shall provide the City with written notice of any policy cancellation, within two (2) business days of their receipt of such notice.

J. Failure to Maintain Insurance. Failure on the part of the Hearing Examiner to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to the Hearing Examiner to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Hearing Examiner from the City.

K. City's Full Access to Hearing Examiner Limits. If the Hearing Examiner maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of

Commercial General and Excess or Umbrella liability maintained by the Hearing Examiner, irrespective of whether such limits maintained by the Hearing Examiner are greater than those required by this Agreement or any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Hearing Examiner.

12. Work Product.

Any deliverables identified in the Scope of Work or otherwise identified in writing by the City that are produced by the Hearing Examiner in performing the Services under this Agreement and which are delivered to the City shall belong to the City. Any such work product shall be delivered to the City by the Hearing Examiner at the termination or cancellation date of this Agreement, or as soon thereafter as possible. All other documents are owned by the Hearing Examiner.

13. Treatment of Assets.

A. Title to all property furnished by the City shall remain in the name of the City.

B. Title to all nonexpendable personal property and all real property purchased by the Hearing Examiner, the cost of which the Hearing Examiner is entitled to be reimbursed as a direct item of cost under this Agreement, shall pass to and vest in the City, or if appropriate, the state or federal department supplying funds therefor, upon delivery of such property by the Hearing Examiner. If the Hearing Examiner elects to capitalize and depreciate such nonexpendable personal property in lieu of claiming the acquisition cost as a direct item of cost, title to such property shall remain with the Hearing Examiner. An election to capitalize and depreciate or claim acquisition cost as a direct item of cost shall be irrevocable.

C. Nonexpendable personal property purchased by the Hearing Examiner under the terms of this Agreement in which title is vested in the City shall not be rented, loaned or otherwise passed to any person, partnership, corporation/association or organization without the prior expressed written approval of the City or its authorized representative, and such property shall, unless otherwise provided herein or approved by the City or its authorized representative, be used only for the performance of this Agreement.

D. As a condition precedent to reimbursement for the purchase of nonexpendable personal property, title to which shall vest in the City, the Hearing Examiner agrees to execute such security agreements and other documents as shall be necessary for the City to perfect its interest in such property in accordance with the "Uniform Commercial Code--Secured Transactions" as codified in Article 9 of Title 62A, the Revised Code of Washington.

E. The Hearing Examiner shall be responsible for any loss or damage to the property of the City including expenses entered thereunto which results from negligence, willful misconduct, or lack of good faith on the part of the Hearing Examiner, or which results from the failure on the part of the Hearing Examiner to maintain and administer in accordance with sound management practices that property, to ensure that the property will be returned to the City in like condition to that in which it was furnished or purchased, fair wear and tear excepted.

F. Upon the happening of loss or destruction of, or damage to, any City property, the Hearing Examiner shall notify the City or its authorized representative and shall take all reasonable steps to protect that property from further damage.

G. The Hearing Examiner shall surrender to the City all property of the City within thirty (30) days after rescission, termination or completion of this Agreement unless otherwise mutually agreed upon by the Parties.

14. Books and Records.

The Hearing Examiner agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of the Services and maintain such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject, at all reasonable times, to inspection, review or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

Records owned, used, or retained by the City that meet the definition of a “public record” pursuant to RCW 42.56.010 are subject to disclosure under Washington’s Public Records Act. Should the Hearing Examiner fail to provide records created or used by the Hearing Examiner in his work for the City within ten (10) days of the City’s request for such records, the Hearing Examiner shall indemnify, defend, and hold the City harmless for any public records judgment, including costs and attorney’s fees, against the City involving such withheld records.

15. Non-Appropriation of Funds.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to continue the Agreement after the end of the current fiscal period, and this Agreement will automatically terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

16. General Provisions.

A. Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

B. Modification. No provision of this Agreement, including this provision, may be amended or modified except by written agreement signed by the Parties.

C. Full Force and Effect; Severability. Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect. Further, if it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, the provision appears to conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

D. Assignment. Neither the Hearing Examiner nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

1. If the Hearing Examiner desires to assign this Agreement or subcontract any of its work hereunder, the Hearing Examiner shall submit a written request to the City for approval not less than fifteen (15) days prior to the commencement date of any proposed assignment or subcontract.

2. Any work or services assigned or subcontracted for hereunder shall be subject to each provision of this Agreement.

3. Any technical/professional service subcontract not listed in this Agreement, which is to be charged to this Agreement, must have prior written approval by the City.

4. The City reserves the right to inspect any assignment or subcontract document.

E. Successors in Interest. Subject to the foregoing Subsection, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns.

F. Attorney Fees. In the event either of the Parties defaults on the performance of any term of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, the prevailing party shall be entitled to its reasonable attorneys' fees, costs and expenses to be paid by the other Party.

G. No Waiver. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

H. Governing Law. This Agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington.

I. Authority. Each individual executing this Agreement on behalf of the City and the Hearing Examiner represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Hearing Examiner or the City.

J. Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

K. Captions. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement.

L. Performance. Time is of the essence in performance of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Hearing Examiner's performance of this Agreement.

M. Remedies Cumulative. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

N. Counterparts. This Agreement may be executed in a number of identical counterparts which, taken together, constitute collectively one Agreement; but in making proof of this Agreement, it is not necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature or an electronically scanned signature, or an electronic or digital signature where permitted by law, must be deemed to be an original signature for all purposes. All executed counterparts of this Agreement are originals, but all such counterparts, when taken together, constitute one and the same Agreement.

O. Equal Opportunity to Draft. The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if any, attached. No ambiguity shall be construed against any Party upon a claim that that Party drafted the ambiguous language.

P. Venue. All lawsuits or other legal actions whatsoever with regard to this Agreement shall be brought in the Superior Court of Thurston County, Washington.

Q. Ratification. Any work performed prior to the effective date that falls within the scope of this Agreement and is consistent with its terms is hereby ratified and confirmed.

R. Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

1. By signing the Agreement below, the Hearing Examiner certifies to the best of his knowledge and belief, that he and his principles:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses

enumerated in paragraph 1.b. of this certification; and

d. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

2. Where the Hearing Examiner is unable to certify to any of the statements in this certification, such Hearing Examiner shall attach an explanation to this proposal.

S. Early Retirement from the State of Washington- Certification. By signing this form, you certify that no one being directly compensated for their services pursuant to this Agreement has retired from the Washington State Retirement System using the 2008 Early Retirement Factors with restrictions on returning to work.

CITY OF OLYMPIA

By: _____

Steven J. Burney, City Manager

P.O. Box 1967

Olympia WA 98507-1967

Date of Signature: _____

APPROVED AS TO FORM:

Mark Barber

City Attorney

I certify that I am authorized to execute this Agreement on behalf of the Hearing Examiner.

MARK SCHEIBMEIR:

By: Mark Scheibmeir

Mark C. Scheibmeir

299 NW Center Street, Chehalis WA 98532

360.748.3386

Date of Signature: 03/16/2022

Exhibit "A"

STATEMENT OF COMPLIANCE WITH NONDISCRIMINATION REQUIREMENT

The Olympia City Council has made compliance with the City's *Nondiscrimination in Delivery of City Services or Resources* ordinance (OMC 1.24) a high priority, whether services are provided by City employees or through contract with other entities. It is important that all contract agencies or vendors and their employees understand and carry out the City's nondiscrimination policy. Accordingly, each City agreement or contract for services contains language that requires an agency or vendor to agree that it shall not unlawfully discriminate against an employee or client based on any legally protected status, which includes but is not limited to: race, creed, religion, color, national origin, age, sex, marital status, veteran status, sexual orientation, gender identity, genetic information, or the presence of any disability. Listed below are methods to ensure that this policy is communicated to your employees, if applicable.

- Nondiscrimination provisions are posted on printed material with broad distribution (newsletters, brochures, etc.).
- Nondiscrimination provisions are posted on applications for service.
- Nondiscrimination provisions are posted on the agency's web site.
- Nondiscrimination provisions are included in human resource materials provided to job applicants and new employees.
- Nondiscrimination provisions are shared during meetings.

Failure to implement at least two of the measures specified above or to comply with the City of Olympia's nondiscrimination ordinance constitutes a breach of contract.

By signing this statement, I acknowledge compliance with the City of Olympia's nondiscrimination ordinance by the use of at least two of the measures specified above.

Mark Scheibmeir
(Signature)

03/16/2022
(Date)

Mark C. Scheibmeir
Print Name of Person Signing

Alternative Section for Sole Proprietor: I am a sole proprietor and have reviewed the statement above. I agree not to discriminate against any client, or any future employees, based on any legally protected status.

(Sole Proprietor Signature)

(Date)

Exhibit "B"
EQUAL BENEFITS COMPLIANCE DECLARATION

Contractors or consultants on City agreements or contracts estimated to cost \$50,000 or more shall comply with Olympia Municipal Code, Chapter 3.18. This provision requires that if contractors or consultants provide benefits, they do so without discrimination based on age, sex, race, creed, color, sexual orientation, national origin, or the presence of any physical, mental or sensory disability, or because of any other status protected from discrimination by law. Contractors or consultants must have policies in place prohibiting such discrimination, prior to contracting with the City.

I declare that the Consultant listed below complies with the City of Olympia Equal Benefits Ordinance, that the information provided on this form is true and correct, and that I am legally authorized to bind the Consultant.

Mark C. Scheibmeir
Consultant Name

Mark Scheibmeir
Signature

03/16/2022
Date