

20273

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF OLYMPIA
AND MARK C. SCHEIBMEIR**

THIS AGREEMENT is made this 18th day of April, 2013, between the City of Olympia, (hereinafter the "City") and Mr. Mark C. Scheibmeir (hereinafter "Hearing Examiner").

WHEREAS, Hearing Examiner is in the business of providing certain professional services specified herein; and

WHEREAS, the City desires to contract with Hearing Examiner for the provision of such services and Hearing Examiner agrees to contract with the City for same;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed between the parties as follows:

TERMS

I. **Description of Work.** The City of Olympia hereby appoints 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.

II. **Payment.**

- A. The City shall pay Hearing Examiner \$175.00 per hour. This hourly rate shall constitute compensation for all costs incurred by the Hearing Examiner including travel, secretarial and copying expenses.
- B. The City shall provide "clerk" services for the 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 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.

III. **Relationship of Parties.** The parties intend that an independent contractor relationship will be created by this Agreement. The Hearing Examiner is customarily engaged in an independently established trade which encompasses the specific service provided to the City

hereunder. No agent, employee, representative or subcontractor of Hearing Examiner shall be or shall be deemed to be the employee, agent, representative or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to the Hearing Examiner or Hearing Examiner's employees, agents, representatives or subcontractors. The Hearing Examiner will be solely and entirely responsible for their acts and for the acts of Hearing Examiner's agents, employees, representatives and subcontractors during the performance of this Agreement. This Agreement does not create any duty to any third party. No third party beneficiaries are created by this Agreement.

IV. Duration of Agreement. This Agreement shall be effective for a period commencing from the date of signature to April 30, 2015, except as provided for in paragraph V below. This Agreement may be extended by mutual written agreement of the parties.

V. Termination.

A. Termination Upon the City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective after thirty (30) days upon delivery of written notice to the Hearing Examiner, except as provided for in subparagraph V.C below.

B. Termination Upon the Hearing Examiner's Option. The Hearing Examiner shall have the option to terminate this Agreement after thirty (30) days upon delivery of written notice to the City.

C. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by the Hearing Examiner to the effective date of termination, as described in the final invoice to the City. The City Manager shall make the final determination about what services have been satisfactorily performed, which decision shall be final, binding and conclusive.

D. The City may terminate immediately for good cause, such as a violation of the appearance of fairness doctrine.

VI. Discrimination. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Hearing Examiner, its subcontractors or any person acting on behalf of Hearing Examiner shall not, by reason of race, religion, color, sex, national origin or the presence of any sensory, mental, or physical handicap discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification. Hearing Examiner hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, losses or suits including attorneys' fees, awards or liabilities to any person, including claims by Hearing Examiner's own employees to which Hearing Examiner might otherwise be immune under Title 51 RCW, arising out of or in connection with the Hearing Examiner's negligent performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

In the event of liability for any reason described above which is caused by or results from the concurrent negligence of the Hearing Examiner (and Hearing Examiner's employees, agents and representatives) and the City (and its officers, officials, employees, agents or representatives), each party's liability shall only be to the extent of its negligence. Such indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

The City's inspection or acceptance of any of Hearing Examiner's work when completed shall not be grounds to avoid any of these covenants of indemnification. It is further specifically and expressly understood that the indemnification provided herein constitutes Hearing Examiner's waiver of immunity under Title 51 RCW, solely for the purposes of indemnification. This waiver has been mutually negotiated by the parties.

VIII. Insurance.

- A. 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 Hearing Examiner, their agents, representatives, employees or subcontractors.
- B. The Hearing Examiner shall maintain the following insurance:
 1. Commercial General Liability. Insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit. The City shall be named as an insured under the Hearing Examiner's Commercial General Liability insurance policy with respect to the work performed for the City.
 2. Professional Liability. Insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
- C. Verification of Coverage. 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.
- D. 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.
- E. 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 contract 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.

IX. **Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Hearing Examiner.

X. **Assignment.** Any assignment of this Agreement by Hearing Examiner without the written consent of the City shall be void.

XI. **Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

Notices should be sent to:

Mark C. Scheibmeir
Hillier, Scheibmeir, Vey & Kelly, P.S.
299 N. Center Street
PO Box 939
Chehalis, WA 98532

Phone: (360) 748-3386
Fax: (360) 748-9533
Email: mscheibmeir@localaccess.com

Steven Friddle, Community Services Manager
The City of Olympia
Community Planning and Development Department
PO Box 1967
Olympia, WA 98507-1967

Phone: (360) 753-8591
Fax: (360) 753-8087
Email: sfriddle@ci.olympia.wa.us

XII. **Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

XIII. **Resolution of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the City Manager, whose decision shall be final. Any appeal from the decision of the City Manager shall be to Thurston County superior court. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The canon of construction against the drafter does not apply to this Agreement. Ambiguous terms shall be construed in a manner that is in the public interest.

XIV. **Effective Date.** This Agreement may be executed in multiple counterparts, and such counterparts shall collectively constitute the agreement. It is effective on the date of the last signing party. One party's signature alone does not constitute a binding offer on that party.

XV. **Authority to Sign.** By signing this Agreement below, the parties warrant that they have the authority to enter into this Agreement.

XVI. **Severability.** If any portion of this agreement is held invalid, such invalid section or sections shall not affect the remainder of the agreement.

CITY OF OLYMPIA

MARK C. SCHEIBMEIR

By: *Steve R. Hall*
Its: *City Manager*
Date: _____

By: _____
Its: _____
Date: *4/18/13*

APPROVED AS TO FORM:

Darren Nienaber
Deputy City Attorney