

RECORDED 4650
DATE 5-3-12
BY JAL
12-028

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF WOODINVILLE AND
LAW OFFICES OF JAMES M. DRISCOLL**

THIS AGREEMENT, is made this 19th day of April, 2012, by and between the City of Woodinville (hereinafter referred to as "City"), a Washington Municipal Corporation, and Law Offices of James M. Driscoll (hereinafter referred to as "Service Provider"), doing business at 6730 Sycamore NW, Seattle, WA 98117.

WHEREAS, Service Provider is in the business of providing certain professional services specified herein; and

WHEREAS, the City desires to contract with Service Provider for the provision of Hearing Examiner Services, and Service Provider agrees to contract with the City for same;

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

TERMS

1. **Description of Work.** Service Provider shall perform work as described in Attachment "A", Scope of Work, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. Service Provider shall not perform any additional services without the expressed permission of the City.

2. **Payment.**
 - A. The City shall pay Service Provider at the hourly rate set forth in Attachment "B" but not more than a total of THIRTY FIVE THOUSAND AND NO/100 dollars (\$35,000.00) for the services described in this Agreement. This is the maximum amount to be paid under this Agreement, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed supplemental agreement.

 - B. Service Provider shall submit monthly payment invoices to the City after such services have been performed, and the City shall make payments within four (4) weeks after the submittal of each approved invoice. Such invoice shall detail the hours worked, a description of the tasks performed, and shall separate all charges for clerical work and reimbursable expenses.

 - C. If the City objects to all or any portion of any invoice, it shall so notify Service Provider of the same within five (5) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.

3. **Relationship of Parties.** The parties intend that an independent contractor - client relationship will be created by this Agreement. As Service Provider 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 Service Provider 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 Service Provider or his employees, agents, representatives or subcontractors. Service Provider will be solely and entirely responsible for his acts and for the acts of Service Provider's agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that Service Provider performs hereunder.
4. **Project Name.** Hearing Examiner Services
5. **Duration of Work.** Service Provider shall complete the work described in Attachment A on or before December 31, 2014.
6. **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 upon ten (10) days written notice to the Service Provider.
 - B. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by Service Provider 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.
7. **Nondiscrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Service Provider, its subcontractors or any person acting on behalf of Service Provider shall not, by reason of race, religion, color, sex, marital status, national origin or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.
8. **Indemnification / Hold Harmless.** The Service Provider 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 negligent or other tortious acts, errors or omissions of the Service Provider in connection with the performance of the Agreement.

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 Service Provider and the City, its officers, officials, employees, and volunteers, the Service Provider's liability hereunder shall be only to the extent of the Service Provider's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Service Provider'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.

9. **Insurance.** The Service Provider 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 Service Provider, their agents, representatives, employees or subcontractors.
 - A. **Minimum Scope of Insurance.** Service Provider shall obtain insurance of the types described below:
 1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
 - B. **Minimum Amounts of Insurance.** Service Provider 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.
 - C. **Other Insurance Provisions.** Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.
 - D. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
 - E. **Verification of Coverage.** Service Provider 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 Service Provider before commencement of the work.
 - F. **Notice of Cancellation.** The Service Provider shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.
 - G. **Failure to Maintain Insurance.** Failure on the part of the Service Provider to maintain the insurance as required shall constitute a material breach of contract,

upon which the City may, after giving five business days notice to the Service Provider to correct the breach, immediately terminate the contract.

10. **Entire Agreement.** The written provisions and terms of this Agreement, together with all documents attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.
11. **City's Right of Supervision, Limitation of Work Performed by Service Provider.** Even though Service Provider works as an independent contractor in the performance of his duties under this Agreement, the work must meet the approval of the City and be subject to the City's general right of inspection and supervision to secure the satisfactory completion thereof. In the performance of work under this Agreement, Service Provider shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to Service Provider's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.
12. **Work Performed at Service Provider's Risk.** Service Provider shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Service Provider's own risk, and Service Provider shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
13. **Ownership of Products and Premises Security**
 - A. All reports, plans, specifications, data maps, and documents produced by the Service Provider in the performance of services under this Agreement, whether in draft or final form and whether written, computerized, or in other form, shall be the property of the City.
 - B. While working on the City's premises, the Service Provider agrees to observe and support the City's rules and policies relating to maintaining physical security of the City's premises.
14. **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 Service Provider.
15. **Assignment.** Any assignment of this Agreement by Service Provider without the written consent of the City shall be void.
16. **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.

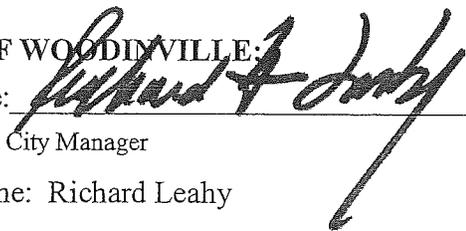
17. **Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or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

18. **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. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF WOODINVILLE:

Signature: _____

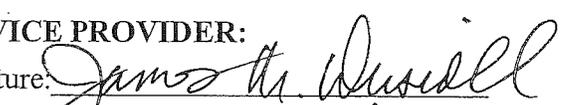


City Manager

Print Name: Richard Leahy

SERVICE PROVIDER:

Signature: _____



Print Name: James M. Driscoll

Title: OWNER - Law Offices of James M. Driscoll PS

Taxpayer ID #: _____

CITY CONTACT:

Alexandra Sheeks, Assistant to the City Manager

City of Woodinville

17301 133rd Avenue NE

Woodinville, WA 98072

Phone: 425-489-2700

Fax: 425-489-2705

SERVICE PROVIDER CONTACT:

Print Name: James M. Driscoll

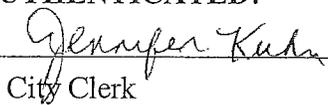
Address: 6730 Sycamore NW
Seattle, WA 98117

Phone: 206-784-9787

Fax: _____

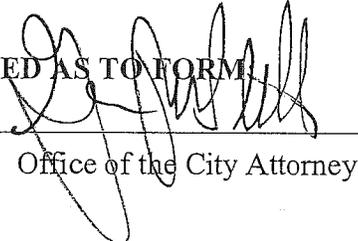
ATTEST/AUTHENTICATED:

Signature: _____


City Clerk

APPROVED AS TO FORM:

Signature: _____


Office of the City Attorney

ATTACHMENT A

SCOPE OF WORK

The Hearing Examiner's primary responsibility is to conduct quasi-judicial hearings on land use matters on behalf of the City Council, and to make decisions or recommendations supported by findings and conclusions. The Hearing Examiner also conducts other hearings as provided by statute, ordinance, or City Council or City Manager direction.

The Hearing Examiner will:

- A. Perform all services in a timely manner and within the timelines required by the laws, ordinances or rules applicable to each Hearing Examiner proceeding.
- B. Perform the duties of the Hearing Examiner set forth in Woodinville Municipal Code Chapter 2.27, as now or hereafter amended, together with such other Hearing Examiner services as may be provided by the Woodinville City Code and/or assigned from time to time by the City Council or City Manager, including training to City staff as may be necessary for the efficient conduct of City business.
- C. Receive and examine all available information as part of hearing preparation.
- D. Conduct public hearings and create an administrative record.
- E. Receive and identify all exhibits and evidence offered, and making evidentiary rulings as necessary.
- F. Attend and participate when requested at City Council meetings when the Hearing Examiner's report and recommendation/decision are being considered by the City Council.
- G. Be responsible for all aspects of each matter assigned from the time of assignment through its conclusion, and issues reports thereon in the form of a decision or recommendation to a decision maker, with findings of fact and conclusions supporting the decision/recommendation. The Hearing Examiner will provide a signed original of each decision/recommendation to the City.
- H. Prepare an annual report in January of each year to the City Manager on its Hearing Examiner activities for Woodinville in order that the City may evaluate the functions and cost effectiveness of Hearing Examiner services.
- I. Prepare Hearing Examiner procedures, when requested by the City. If the Hearing Examiner initiates changes to the Hearing Examiner procedures, the City of Woodinville will not pay for this service.
- J. Prepare materials for City staff to use in community education events when requested by the City.
- K. Not preside over any matter as a Hearing Examiner in which he/she has an unresolved conflict of interest or where his/her participation in the matter may violate the appearance of fairness. In the event the Hearing Examiner has any conflict of interest or

lacks the appearance of fairness with regard to any matter, the Hearing Examiner shall recuse himself/herself from consideration of the matter.

- L. Keep current and knowledgeable regarding the City's municipal code, plans, policies, and ordinances, which are available to the Hearing Examiner on the City's website.

James M. Driscoll of Law Offices of James M. Driscoll SHALL SERVE AS LEAD Hearing Examiner and be available for 12 hearing dates each year. Qualified associates may serve on individual cases with the consent of the City. The Hearing Examiner and the City shall agree upon exact hearing dates.

All invoices shall set forth the basis of the charge and the matter or proceeding for which it was incurred. Where possible, the Service Provider will invoice the City once per proceeding. Where not possible, the invoice will clearly indicate that this is not the 'final' invoice.

The City of Woodinville will not reimburse the Hearing Examiner for actual out of pocket expenses incurred in the conduct of the Hearing Examiner's duties for:

- Mileage
- Parking
- Copying
- Facsimile transmission charges
- Postage
- Clerical, word processing reproduction, or other employee payroll costs or expenses.

The City of Woodinville will reimburse for actual out of pocket expenses incurred in the conduct of the Hearing Examiner's duties for:

- Any necessary long distance telephone charges

The Woodinville Hearing Examiner is an independent contractor who must qualify as an independent contractor under IRS and state regulatory agency requirements. The Woodinville Hearing Examiner, as an independent contractor, is responsible for all arrangements, costs, and liabilities associated with their own business location, equipment, and employees. Other than serving as the venue for quasi-judicial hearings and other assigned meetings or activities at Woodinville City Hall, all work of the Hearing Examiner in conjunction with their responsibilities shall take place outside of City Hall.

PERFORMANCE GUIDELINES:

The following are the performance expectations for the Hearing Examiner. The performance of the Examiner will be evaluated at least annually in accordance with the following guidelines and measures of effectiveness:

- (A) The logic of findings and conclusions and the reasoning of recommendations and decisions.
- (B) The decorum, demeanor and effectiveness of the Hearing Examiner in the management and conduct of the proceedings assigned.
- (C) The efficiency, effectiveness and service demonstrated, including cost effectiveness, timeliness, and responsiveness.
- (D) Preparation of reports, including format, clarity, comprehensibility, timeliness, thoroughness, completeness, grasp of and responsiveness to the issues presented, and familiarity with and application of applicable and relevant criteria, policies, regulations, and/or law.

GENERAL ADMINISTRATION AND MANAGEMENT

- (A) The City Manager, or designee, shall review and approve the monthly compensation for Hearing Examiner. Hearing Examiner will report to the City Manager, or designee, regarding performance of services under this Agreement.
- (B) For Development Services Department land use and code enforcement matters, Hearing Examiner will prepare typed Findings of Fact and Conclusions of Law, together with the Decision and/or Recommendation. The Hearing Examiner will deliver all Hearing Examiner reports to the Development Services Department for distribution to parties of record.
- (C) For those matters originating in other City departments, Hearing Examiner will prepare typed Findings of Fact and Conclusions of Law (as required by law or regulation), together with the Decision and/or Recommendation and deliver the Hearing Examiner reports to the appropriate City department for distribution to the parties of record.

ADMINISTRATION OF HEARINGS

- (A) The Development Services Director or delegate, or other appropriate City department, will coordinate the scheduling of public hearings, and will decide whether the particular matter will be scheduled for a daytime hearing or a night hearing. Once a hearing has begun, the Hearing Examiner who is presiding shall have the discretion to decide whether that hearing may be continued to another date or time, such as if necessary to accommodate the schedules of interested parties or if, in the Hearing Examiner's discretion, a continuation is necessary in order to allow the parties to conclude a settlement.
- (B) City staff will provide Hearing Examiner copies of all necessary documents without charging for copies. The Development Services Director, or designee, or other appropriate City department, shall coordinate so that the Department or the City Clerk's Office sends predetermined types of information to Hearing Examiner without Hearing Examiner making a specific request therefore. City staff will send a copy of all City Council decisions on matters in which there was an earlier Hearing Examiner hearing.

PROFESSIONAL REQUIREMENTS

- (A) Hearing Examiner will keep current on issues relevant to the Hearing Examiner, including attendance at continuing education programs emphasizing land use law, environmental law, shoreline laws, land use code, civil violations, code enforcement, ethic codes, and tax laws.
- (B) Although Hearing Examiner is not a City employee, Contractor agrees to follow the guidelines in the City's Code of Ethics as set forth in WMC Ch. 2.36.
- (C) Hearing Examiner agrees that during the term of this Agreement, Hearing Examiner will not engage in or accept private employment from or render services for private interests, when such employment or service is incompatible with the proper discharge of the official duties of Hearing Examiner, or would tend to impair independence of judgment or action in performing Hearing Examiner duties, nor accept a retainer or compensation that is contingent upon a specific action by the City.

- (D) Hearing Examiner, during the term of this Agreement, agrees that Hearing Examiner will not appear in any proceeding in which the City or a City officer is a party, including before the City of Woodinville Planning Commission and City Council, except as a witness under subpoena, without the prior written consent of the Woodinville City Manager.
- (E) In view of the special relationship between Hearing Examiner and the City under this Agreement, for one year after the expiration or termination of this Agreement, Hearing Examiner agrees to not appear as a witness or agent in any matter or case adverse to the City or the Woodinville Development Services Department or other City department nor to appear as a witness or agent of a private party before the Woodinville Hearing Examiner, the Woodinville Planning Commission, or the Woodinville City Council.

HEARING EXAMINER INDEPENDENCE

The parties recognize that the Hearing Examiner position is quasi-judicial in nature. As such, the Hearing Examiner needs to have independence in carrying out the quasi-judicial responsibilities. The Hearing Examiner needs to have independence from the City Council and the City Manager with regard to the making of quasi-judicial decisions. The parties understand and agree that the Hearing Examiner shall be free of any supervision or other influence from the City Manager or other City Officials with respect to any decision or recommendation made by the Hearing Examiner on any specific case, issue, or permit. The parties will also be cognizant of the need to maintain an appearance of independence from staff with regard to quasi-judicial matters. At the same time, there is also a need for coordination between the Hearing Examiner and City officials and staff to assure that other duties and roles are performed. For example, the Hearing Examiner needs to communicate and coordinate with City staff regarding the administrative aspects of specific hearings and in general with regard to hearing procedures.

SERVICES PERFORMED BY THE CITY

- A. The City through its departments will do the following:
 - (1) Furnish written staff reports to the Hearing Examiner at least five (5) working days prior to hearing, as well as maps and such other exhibits as may be necessary regarding each matter to be heard;
 - (2) Schedule all hearings before the Hearing Examiner;
 - (3) Send out notices of hearings and decisions;
 - (4) Make all required copies of said decisions and correspondence;
 - (5) Keep and maintain all official files and records of the hearings;
 - (6) Operate and ensure the proper functioning of the audio recording equipment during the hearings;
 - (7) Provide administrative support at Hearings; and
 - (8) Do any other actions necessary to administratively process said materials.
- B. The City shall furnish a hearing room, microphone system, and an audio recording system.
- C. The City shall designate a person to serve as the contact person for the Hearing Examiner to facilitate all administrative matters.

ATTACHMENT B

HOURLY RATES

Hourly rates shall be based on the type of case:

For cases in which there is little or no controversy and the Applicant and the City have agreed to most of the terms of the development. Generally, everyone is in agreement and this would be for 90% of the cases. Examples would include: Uncontested or lightly contested plats, variances, conditional use permits, and shoreline permits.

\$140.00 per hour

For controversial cases with many participants and complex issues, there are disputes between the parties, and there are a lot of briefs and reports to go through. Generally, this would be for 10% of the cases. As soon as possible, but no later than 4 days prior to the hearing, the Hearing Examiner shall notify the City in writing if he will be charging a controversial hourly rate fee. Examples would include: SEPA appeals, stormwater and traffic issues.

\$175.00 per hour