



City of Edgewood

Request for Proposals for Hearing Examiner Services

PURPOSE

The City of Edgewood (City) is requesting proposals from individuals, attorneys, or firms with substantial experience in the areas of land use law, real property law, city planning and development, and code enforcement for the purpose of selecting a Hearing Examiner. The Hearing Examiner conducts quasi-judicial hearings on complex land use matters and regulatory compliance issues on behalf of the City and issues decisions and recommendations supported by findings and conclusions. Applicants must be familiar with the City's zoning and building codes; all other applicable city codes, ordinances, resolutions, regulations, and policies; and other applicable state and federal laws (including statutes and case law) and regulations. The City's specific requirements are outlined in the following Request for Proposals (RFP).

SCHEDULE

The anticipated selection process timeline is shown below:

- Issue RFP: October 25, 2021
- Deadline for Submittals: 3 p.m. on November 19, 2021
- Evaluation, Interviews, and Selection Period: November 22 – December 13, 2021
- Anticipated Contract Execution Date: December 14, 2021



SCOPE OF SERVICES SUMMARY

The selected applicant with whom the City contracts shall perform the duties of the Hearing Examiner as set forth in Edgewood Municipal Code (EMC) Chapter 2.40, Hearing Examiner, and as identified in Attachment A.

BUDGET AND CONTRACT PERIOD

Compensation will be established by negotiation between the successful applicant(s) and the City. The initial contract duration will be for a period of three (3) years with an option to extend.

SUBMITTAL REQUIREMENTS

Consultants are encouraged to submit concise and clear responses to the RFP. The proposal shall be submitted as an electronic copy via email. All pages shall be formatted to print on 8.5 x 11-inch paper. The content of the submittal shall include:

- 1. Name and contact information: Identify and provide a resume or similar description of the educational and professional background for the individual to serve as the City's Hearing Examiner. Also identify any individual(s) who will serve as backup or administrative support for the Hearing Examiner.**
- 2. Hearing Examiner experience. Describe relevant experience working for other jurisdictions as a Hearing Examiner, or other quasi-judicial official.**
- 3. Expertise. Describe experience administering and interpreting land use laws, municipal codes, environmental laws, such as SEPA, and other codes, laws, and ordinances germane to the Hearing Examiner duties.**
- 4. Civil violation proceedings. Describe your experience with code enforcement and other types of administrative appeals, including appeal proceedings outside of the land use context.**
- 5. Provide a statement describing your view of a municipal Hearing Examiner's roles and duties. Describe your approach to conducting hearings and your perspective about**



what constitutes a “good result” for matters over which the Hearing Examiner might preside.

- 6. Fee proposal. Provide a fee proposal that describes how you will be paid for the proposed services, e.g., hourly rate, monthly retainer, per-case fee, etc.**
- 7. Hearing Examiner reports. Submit two (2) written samples of prior decisions in which you were the primary drafter that demonstrate how your experience matches the scope of services.**
- 8. Professional References. Provide contact information for three (3) professional references with knowledge of the Hearing Examiner’s work and experience.**

PROPOSAL SUBMISSION REQUIREMENTS

Email the proposal to:

City Clerk/ HR Director
Rachel Pitzel
Rachel@cityofedgewood.org

Proposals will only be accepted until 3:00 p.m. on November 19, 2021. The City of Edgewood will not pay any cost incurred by any consultant resulting from preparation or submittal of a proposal in response to this RFP. The City reserves the right to modify or cancel (in whole or in part) this RFP, reject any and all proposals, and waive minor irregularities in any proposal. The successful consultant will be required to execute a contract with the City, in substantially the same form as in Exhibit B, or as otherwise approved by the City Attorney. The selection of consultant shall be made based upon the City's opinion of the professional prowess of the applicant and the ability to be available to meet the busy schedule of our fast-growing municipality. The selection will be made without regard to race, color, sex, age, religion, national origin, or political affiliation. The City of Edgewood is an Equal Opportunity Employer.



Attachment A

- The Hearing Examiner shall perform all the duties as set forth in Edgewood Municipal Code (EMC) Chapter 2.40, Hearing Examiner.
- The City's Hearing Examiner is responsible for conducting hearings on and adjudicating quasi-judicial cases involving a variety of complex land use and regulatory compliance issues, appeals of administrative decisions, and other issues which the City Council may designate to the Hearing Examiner by ordinance or resolution.
- The Hearing Examiner shall issue decisions and recommendations based on relevant ordinances, regulations, policies, statutes, case law, and other authorities.
- The City utilizes a Development Review Committee (DRC) process for reviewing various land use applications.
 - The process follows a calendar that identifies the anticipated hearing date for certain applications.
 - Those dates are scheduled on the morning of the first and third Tuesday of each month.
- The City is seeking a Hearing Examiner who can adhere to the DRC schedule (1st and 3rd Tuesday of each month).
 - The Hearing Examiner will be asked to reserve those dates and times as a priority schedule for Edgewood.
 - In the event no applications are submitted for the reversed hearing date, the City will provide at least 30 days' notice of cancellation for the reserved standing meeting.
- Hearings are generally held at Edgewood City Hall (2224 104th Avenue East).
 - For the past 18 months, hearings have been scheduled virtually with the Hearing Examiner and staff situated in the City Council Chamber at City Hall and the applicant and attendees joining the proceedings via Zoom.
 - While in-person attendance is essential post pandemic and currently encouraged, virtual attendance could be negotiated in the contract for the selected Hearing Examiner.
- Attendance preference should be noted in the submittal materials if you are not intending to be present at City Hall during the hearings.



Attachment B

CITY OF EDGEWOOD PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the _____ day of _____, 202____, by and between the City of Edgewood, a municipal corporation, organized under the laws of the State of Washington, whose address is:

CITY OF EDGEWOOD, WASHINGTON (hereinafter the "CITY")
2224 - 104th Avenue E.
Edgewood, Washington 98372
Contact: Mayor Daryl Eidinger Phone: 253-952-3299 Fax: 253-952-3537

and _____ **Name of Consultant** _____, a _____ (describe the type of organization, whether corporation, sole proprietorship, etc.), organized under the laws of the State of Washington, doing business at:

_____ **Consultant's name** _____ (hereinafter the "CONSULTANT")

Address _____

City, State, Zip _____

Contact: _____ Phone: _____ Fax: _____

for personal services in connection with the following Project:

_____ **Name project here** _____

TERMS AND CONDITIONS

1. Services by Consultant.

A. Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

2. Schedule of Work.



Consultant shall perform the services described in the scope of work in accordance with the Schedule attached to this contract as Exhibit "A." If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

3. Terms. This Agreement shall commence on _____, ("Commencement Date") and shall terminate on _____ unless extended or terminated in writing as provided herein.

4. Compensation.

- LUMP SUM.** Compensation for these services shall be a Lump Sum of \$_____ which includes all applicable tax.
- TIME AND MATERIALS NOT TO EXCEED.** Compensation for these services shall not exceed \$_____ including all applicable tax, without written authorization and will be based on billing rates and reimbursable expenses attached hereto as Exhibit A.
- TIME AND MATERIALS.** Compensation for these services shall be on a time and material basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "_____":
- OTHER.** _____

5. Payment.

A. Consultant shall maintain time and expense records and provide them to the City monthly after services have been performed, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.

B. All invoices shall be paid by City warrant within sixty (60) days of receipt of a proper invoice. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

D. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

6. Discrimination and Compliance with Laws



A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. The Consultant agrees to comply with all federal, state and municipal laws, rules and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

C. Consultant shall obtain a City of Edgewood business license prior to receipt of written Notice to Proceed.

D. Violation of this Paragraph 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

7. Relationship of Parties. The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, subject to the City's approval and general right of inspection to secure the satisfactory completion thereof. 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 employees, agents, representatives or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants 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 the Consultant performs hereunder.

8. Suspension and Termination of Agreement

A. Termination. This Agreement may be terminated by the City at any time upon 10 days' written notice to the Consultant.

B. Rights Upon Termination.

1. *With or Without Cause.* Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its



best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

2. *Default.* If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

D. Suspension. The City may suspend this Agreement, at its sole discretion. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

E. Notice of Termination or Suspension. If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date as stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in Section 15 herein.

9. Standard of Care. Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

10. Ownership of Work Product.

A. All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 8 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City.

B. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.



11. Work Performed at the Consultant's Risk. The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents and sub-consultants in the performance of the work hereunder, and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

12. Indemnification. The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the 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 Consultant and the City, its officers, officials, employees, agents and Volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

13. Insurance. The Consultant 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 Consultant, its agents, representatives, or employees.

- A. No limitation. The Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- B. Minimum Scope of Insurance

Consultant 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.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, stop-gap, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as



an additional insured under the Consultant'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 and Employer's Liability Insurance.
4. Professional Liability insurance appropriate to the Consultant's profession.

C. Minimum Amounts of Insurance

Consultant 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 \$1,000,000 each occurrence, \$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.

D. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provision for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage 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 Consultant's insurance and shall not contribute with it.

E. Acceptability of Insurers

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

F. Verification of Coverage

Consultant 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 Consultant before commencement of the work.

G. Notice of Cancellation.

The Consultant shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.



H. Failure to Maintain Insurance.

Failure on the part of the Consultant 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 Consultant 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 Consultant from the City.

I. City Full Availability of Consultant Limits

If the Consultant 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 Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

14. Assigning or Subcontracting. Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

15. Notice. Any notices required to be given by the City to Consultant or by Consultant to the City shall be in writing and delivered to the parties at the following addresses:

Daryl Eidinger
Mayor
2224 - 104th Avenue E.
Edgewood, WA 98372

Phone: 253-952-3299
Fax: 253-952-3537

NAME OF CONSULTANT

Attn: _____

Phone: _____

Fax: _____

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

16. Resolution of Disputes and Governing Law.

A. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the parties agree that they shall undertake reasonable attempts at negotiation and compromise, including, but not limited to, informal negotiation, mediation, or arbitration, prior to instituting any legal proceedings. If the parties are unable to resolve any dispute



after such reasonable attempts at negotiation and compromise, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington.

B. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.

17. General Provisions.

A. Non-waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein contained 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 in full force and effect.

B. Modification. No waiver, alteration, 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 the Consultant.

C. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

D. Entire Agreement. The written provisions of this Agreement, together with any Exhibits 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, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

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

CITY OF EDGEWOOD, WASHINGTON

By: _____
Daryl Eidinger
Mayor

Date: _____

CONSULTANT

By: _____
Name: _____

Title: _____



Date: _____

Attest:

By: _____
Rachel Pitzel, CMC
City Clerk

APPROVED AS TO FORM:

By: _____
Ann Marie J. Soto
City Attorney

DRAFT