

# Request for Proposals



City of Lynnwood Procurement Division  
19100 44<sup>th</sup> Ave W Lynnwood, WA 98036

**ADVERTISED DATE: APRIL 1, 2019**

Request for Proposals (RFP) Title: Hearing Examiner Services

RFP Number: 3076

Due Date: April 17, 2019 - 2:00 p.m.

Buyer: Ginny Meads, [gmeads@lynnwoodwa.gov](mailto:gmeads@lynnwoodwa.gov)

Alternate Buyer: Karen Fitzthum, [kfitzthum@lynnwoodwa.gov](mailto:kfitzthum@lynnwoodwa.gov)

**Pre-submittal Conference:**

**Date:** No Presubmittal Conference

**Time:**

**Location:**

**Conference Call:**

**Participant Code:**

Submittals are hereby solicited and will **only** be received  
by:

City of Lynnwood

Procurement Services Section  
19100 44<sup>th</sup> Ave West  
Lynnwood, WA 98036

**We acknowledge that all Addenda issued for this RFQ have been examined as part of the Qualification documents.**

Company Name

Address

City/State /Postal Code

Signature

Authorized Representative / Title

Email

Phone

Fax

Contact Name:

Phone

Email

## **DEFINITION OF WORDS AND TERMS APPLICABLE ONLY TO INSTRUCTION OF THE RFQ**

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Addendum/Addenda: Written additions, deletions, clarification, interpretations, modifications or corrections to the solicitation documents issued by the City during the Qualification period and prior to contract award.

Best and Final Offer: Best and Final Offer shall consist of the revised submittal and any supplemental information requested during the evaluation of qualifications. In the event of any conflict or inconsistency in the items submitted by the Submitter, the items submitted last govern.

Competitive Range: The Competitive Range consists of the Submitters that have a reasonable chance of selection for contract award. The Evaluators (PE) shall conduct the initial evaluation of the submittals considering Evaluation Factors established in the RFQ. The Buyer and Project Manager/PE together shall compare the evaluations and determine the Competitive Range. The Competitive Range may be reduced after the evaluation of additional information, Best and Final Offers and negotiations.

Criteria, Evaluation Criteria or Evaluation Factors: The elements cited in the RFQ that the City shall examine to determine the Submitters understanding of the requirements; technical, business and management approach; key personnel; qualification and experience of the Submitter; potential for successfully accomplishing the Contract; risk allocation and the probable cost to the City.

Days: Calendar days.

Evaluators (PE): Team of people appointed by the City to evaluate the submittals, conduct discussions, call for Best and Final Offers, score the submittals and make recommendations.

Submitter: Individual, association, partnership, firm, company, corporation or a combination thereof, including joint ventures, submitting a submittal to perform the Work.

RFQ: Request for Submittals, also known as the solicitation document.

Reference Documents: Reports, Specifications, and drawings which are available to Submitters for information and reference in preparing submittals but not as part of this Contract.

## **SECTION 1 SUBMITTAL PREPARATION**

### **1.1 Submittal Submission**

Submitters are encouraged to use recycled paper in the preparation of additional documents submitted with this solicitation and shall use both sides of paper sheets where practicable.

Sealed submittals shall contain all required attachments and information and be submitted to The City (hereinafter "City") no later than the date, time and place stated on the front of this RFQ or as amended. The submittals shall show the title and number, the due date specified, and the name and address of the Submitter on the face of the envelope. Submitters are cautioned that failure to comply may result in non-acceptance of the submittal. The Submitter accepts all risks of late delivery of mailed submittals or of misdelivery regardless of fault. Submittals properly and timely submitted will be publicly opened.

Submittals will only be accepted from Consultants able to complete the delivery of goods or services described in the specifications. Joint ventures shall submit one submittal for the team, with accompanying proof of the joint venture agreement.

If a company chooses not to submit a submittal, the City requests the company advise the Buyer by email if they desire to remain listed for the subject of this RFQ and state the reason they did not submit a submittal.

### **1.2 Late Submittals**

Submittals, modifications of submittals, received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered.

### **1.3 Cancellation of RFQ or Postponement of Submittal Opening**

The City reserves the right to cancel this RFQ at any time. The City may change the date and time for submitting submittals prior to the date and time established for submittal.

### **1.4 Submittal Signature**

Each submittal shall include a completed Submittal response form, the first page of this document, signed by an authorized representative of the Submitter.

### **1.5 Addenda**

If at any time, the City changes, revises, deletes, clarifies, increases, or otherwise modifies the RFQ, the City will issue a written Addendum to the RFQ.

### **1.6 Questions and Interpretation of the RFQ**

No oral interpretations of the RFQ will be made to any Submitter. All questions and any explanations must be requested in writing and directed to the Buyer no later than **five (5) Days** prior to the due date specified in the solicitation. Oral explanations or instructions are not binding. Communications concerning this RFQ with other than the listed Buyer or Procurement staff may cause the Submitter to be disqualified. Any information modifying a solicitation will be furnished to all Submitters by addendum. **Communications concerning this submittal, with other than the listed Buyer may cause the Submitter to be disqualified.**

## 1.7 Schedule

<u>Day/Month/Year</u>	<u>Event</u>
<u>April 1, 2019</u>	Public announcement of Request for Submittals
<u>April 10, 2019</u>	Presubmittal questions due, in writing
<u>N/A</u>	Presubmittal conference
<u>April 17, 2019</u>	Submittals due
<u>Week of 4/22/19</u>	*Begin Evaluation of Submittals
<u>Week of 4/29/19</u>	*Begin Interviews/Demonstrations/conduct Site Visits, if applicable
<u>May 2019</u>	*Begin Confirmation Process outlined in LMC 2.06

\*NOTE: Dates preceded by an asterisk are estimated dates. Estimated dates are for information only.

## 1.8 Examination of Submittal and Contract Documents

The submission of a submittal shall constitute an acknowledgement upon which the City may rely that the Submitter has thoroughly examined and is familiar with all requirements and documents pursuant with the RFQ, including any addenda and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods or services to be provided hereunder.

The failure of a Submitter to comply with the above requirement shall in no way relieve the Submitter from any obligations with respect to its submittal or to any Contract awarded pursuant to this RFQ. No claim for additional compensation shall be allowed which is based upon a lack of knowledge or misunderstanding of this RFQ.

## 1.9 Cost of Submittals and Samples

The City is not liable for any costs incurred by Submitter in the preparation and evaluation of submittals submitted. Samples of items required must be submitted to location and at time specified. Unless otherwise specified, samples shall be submitted with no expense to the City. If not destroyed by testing, samples may be returned at the Submitter's request and expense unless otherwise specified.

## 1.10 Modifications of Submittal or Withdrawal of Submittal Prior to Submittal Due Date

At any time before the time and date set for submittal of submittals, a Submitter may submit a modification of a submittal previously submitted to the City. All submittal modifications shall be made in writing, executed and submitted in the same form and manner as the original submittal.

Submittals may be withdrawn by written notice received prior to the exact hour and date specified for receipt of submittals. A submittal also may be withdrawn in person by a Submitter or authorized representative provided their identity is made known and they sign a receipt for the submittal, but only if the withdrawal is made prior to the exact hour and date set for receipt of submittals. All requests for modification or withdrawal of submittals, whether in person or written, shall not reveal the amount of the original submittal.

## 1.11 Submittal Withdrawal After Public Opening

Except for claims of error granted by the City, no Submitter may withdraw a submittal after the date and time established for submitting submittals, or before the award and execution of a Contract pursuant to this RFQ, unless the award is delayed for a period exceeding the period for submittal effectiveness.

Requests to withdraw a submittal due to error must be submitted in writing along with supporting evidence for such claim for review by the City. Evidence must be delivered to the City within two (2) Days after request to withdraw. The City reserves the right to require additional records or information to evaluate the request. Any review by the City of a submittal and/or any review of such a claim of error, including supporting evidence, creates no duty or liability on the City to discover any other submittal error or mistake, and the sole liability for any submittal error or mistake rests with the Submitter.

### 1.12 Error and Administrative Corrections

The City shall not be responsible for any errors in submittals. Submitters shall only be allowed to alter submittals after the submittal deadline in response to requests for clarifications or Best and Final Offers by the City.

The City reserves the rights to allow corrections or amendments to be made that are due to minor administrative errors or irregularities, such as errors in typing, transposition or similar administrative errors.

### 1.13 Submittal Content Requirements

A. The submittal shall contain the following items and follow the sequence outlined below:

**Sections 1 & 2                      Instructions and Information about the RFQ Process**

Cover sheet with Submitter's Signature

**Section 3                              Scope of Work and Submittal Requirements**

Proposals shall be no more than 25 pages with a 12-point font minimum. The content should be presented in the following order:

1. Qualifications: If proposer is an Attorney, state name of Law School and year of graduation. If proposer is a firm, provide this information for all Attorneys that will provide services along with their tenure with the firm. All proposers shall be registered with the Washington State Bar Association.
2. Experience: List chronologically all Hearing Examiner experience, including but not limited to experience with writing legally defensible local land use decisions, holding public meetings and quasi-judicial proceedings. Include client's name and contact information for each case.
3. Approach: Describe the approach to how the individual or firm will provide Hearing Examiner services outlined in Section 3.

B. Submit one original [marked ORIGINAL] unbound submittal and five (5) copies of the submittal and attachments.

1. Submitters shall submit with their submittal an exact duplicate of the original submittal, compact disk or flash drive Adobe Acrobat™ format, and in native format.

### 1.14 Compliance with RFQ Attachments and Addenda

- A. The City intends to award a Contract based on the attachments and addenda contained in this RFQ. Submitters shall submit submittals, which respond to the requirements of the RFQ.
- B. The City reserves the right to reject any submittal for any reason including, but not limited to, the following –

- Any submittal, which is incomplete, obscure, irregular or lacking necessary detail and specificity;
  - Any submittal that has any qualification, limitation, exception or provision attached to the submittal;
  - Any submittal from Submitters who (in the sole judgment of the City) lack the qualifications or responsibility necessary to perform the Work;
  - Any submittal submitted by a Submitter which is not registered or licensed as may be required by the laws of the state of Washington or local government agencies;
  - Any submittal, from Submitters who are not approved as being compliant with the requirements for equal employment opportunity; and
  - Any submittal for which a Submitter fails or neglects to complete and submit any qualifications information within the time specified by the City.
- C. In consideration for the City's review and evaluation of its submittal, the Submitter waives and releases any claims against the City arising from any rejection of any or all submittals, including any claim for costs incurred by Submitters in the preparation and presentation of submittals submitted in response to this RFQ.
- D. Submittals shall address all requirements identified in this RFQ. In addition, the City may consider submittal alternatives submitted by Submitters that provide enhancements beyond the RFQ requirements. Submittal alternatives may be considered if deemed to be in the City's best interests. Submittal alternatives shall be clearly identified.

negotiations.

#### **1.15 Forms Required before Contract Signing**

- W-9 if not already on file with the City.

#### **1.16 Collusion**

If the City determines that collusion has occurred among Submitters, none of the submittals from the participants in such collusion shall be considered. The City's determination shall be final.

#### **1.17 Protest Procedures**

The City has a process in place for receiving protests based upon the RFQ or contract awards. The protest procedure is available at <http://www.lynnwoodwa.gov/City-Services/Bids-Submittals.htm> .

## **SECTION 2 SUBMITTAL EVALUATION AND CONTRACT AWARD**

### **2.1 Submittal Evaluation**

- A. The City will evaluate submittals using the criteria set forth in this RFQ. If deemed necessary, written and/or oral discussions, site visits or any other type of clarification of submittal information may be conducted with those Submitters whose submittals are found to be potentially acceptable. Identified deficiencies, technical requirements, and clarifications may be included among the items for discussion. The discussions are intended to give Submitters a reasonable opportunity to resolve deficiencies, uncertainties and clarifications as requested by the City and to make revisions required by the resulting changes. In addition, the City may request additional business and administrative information.
- B. The City may find that a Submitter appears fully qualified to perform the Contract or it may require additional information or actions from a Submitter. In the event the City determines that the submittal is not the most qualified the City shall eliminate the submittal from further consideration.
- C. The most qualified individual or firm will be invited into negotiations for a contract. Negotiation of a Contract shall be in conformance with applicable federal, state and local laws, regulations and procedures. The objective of the negotiations shall be to reach agreement on all provisions of the proposed Contract. In the event negotiations are not successful, the City may cancel negotiations and commence negotiations with the next qualified submitter.
- D. The City is not required to award a Contract and shall have no obligations until a Contract is signed between the Submitter and the City.

### **2.2 Responsive and Responsible**

#### Responsive

The City will consider all the material submitted by the Submitter, and other evidence it may obtain otherwise, to determine whether the Submitter is in compliance with this RFQ.

#### Responsible

In determining the responsibility of the Submitter, the City may consider:

- the ability, capacity and skill to perform the Contract and provide the service required;
- the character, integrity, reputation, judgment and efficiency;
- financial resources to perform the Contract properly and within the times proposed;
- the quality and timeliness of performance on previous contracts with the City and other agencies, including, but not limited to, the effort necessarily expended by the City and other agencies in securing satisfactory performance and resolving claims;
- compliance with federal, state and local laws and ordinances relating to public contracts;
- other information having a bearing on the decision to award the Contract.

Failure of a Submitter to be deemed responsible or responsive may result in the rejection of a submittal.

### 2.3 Evaluation Criteria and Submittal Scoring

Each submittal has a total possible score 100 points with the points assigned as follows:

	<b>Qualification Evaluation Criteria</b>	<b>Points</b>
<b>Qualifications</b>	<b>Qualifications</b> If proposer is an Attorney, state name of Law School and year of graduation. If the proposer is a firm, provide this information for all Attorneys anticipated to provide services along with each Attorney's tenure with firm. All proposers shall be registered with the Washington State Bar Association.	15
<b>Experience</b>	<b>Experience</b> List chronologically all Hearing Examiner experience, including but not limited to experience with writing legally defensible local land use decisions, holding public meetings and quasi-judicial proceedings. Include client's name and contact information for each case. <i>Note: this information may be used for reference check.</i>	35
<b>Approach</b>	<b>Approach</b> Describe the approach to how the individual or firm will provide Hearing Examiner services outlined in Section 3.	35
	<b>Total possible Written</b>	<b>85</b>
	Interviews	15
	<b>Total Evaluation Points</b>	<b>100</b>

### 2.4 Public Disclosure of Submittals

This procurement is subject to the Washington Public Records Act, RCW (Revised Code of Washington) 42.56 et seq. Submittals submitted under this RFQ shall be considered public documents unless the documents are exempt under the public disclosure laws. After a decision to award the contract has been made, the submittals shall be available for inspection and copying by the public.

If a Submitter considers any portion of its submittal to be protected under the law, the Submitter shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If the City determines that the material is not exempt from public disclosure law, the City will notify the Submitter of the request and allow the Submitter ten (10) Days to take whatever action it deems necessary to protect its interests. If the Submitter does not take such action within said period, the City will release the portions of the submittal deemed subject to disclosure. By submitting a submittal, the Submitter assents to the procedure outlined in this subsection and shall have no claim against the City on account taken under such procedure.



**SUBMITTAL LABEL**

Complete the form below (or reasonable facsimile) and affix to the exterior lower left-hand corner of the submission envelope(s), box(es), etc.

<b>URGENT – SEALED SUBMITTAL ENCLOSED</b> <b>Do Not Delay – Deliver Immediately</b>	
<b>U R G E N T</b>	 <b>City of Lynnwood Procurement and Central Services Division</b> 19100 44 <sup>th</sup> Ave W Lynnwood, WA 98046
	<b>RFP Number.</b> 3076/G. Meads
	<b>Title</b> Hearing Examiner Services
	<b>Opening Date</b> April 17, 2019, 2:00 p.m.
	<b>Firm Name</b>
<b>U R G E N T</b>	

## **SECTION 3           SCOPE OF WORK**

### **1. Purpose**

The City of Lynnwood is requesting Proposals from individual Attorney's or firms with substantial Hearing Examiner experience for the purpose of selecting a City 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. Proposers must be experienced in the areas of land use law, real property law, city planning, development and permitting.

### **2. Scope of Services**

The individual or firm with which the City contracts shall perform all duties of the Hearing Examiner pursuant to the jurisdiction and authority established in the Lynnwood Municipal Code (LMC) [LMC 2.22](#). All duties shall be performed in accordance with all applicable federal, state and city laws, including but not limited to City of Lynnwood land use laws, State Environmental Policy Act ("SEPA"), Shoreline Management Act, Open Meetings Act, Rules of Evidence and all City codes, ordinances, resolutions and standards or policies relating to Hearing Examiner procedures, as now existing or hereinafter adopted or amended.

The Hearing Examiner will:

- Visit project sites, as necessary, prior to public hearings;
- Examine hearing related documents and review case files, City codes and policies, environmental impact statements, plot plans and topographical maps;
- Evaluate testimony and evidence, prepare records, enter final writing findings and impose conditions to conform projects to City ordinances and land use policies;
- Punctually attend all hearings which are held at Lynnwood City Hall. Hearings will be held once every other month.
- Administer the Public Hearing Process in a professional and impartial manner;
- Prepare sound and defensible decisions within the prescribed timelines;
- Coordinate with City Staff on ancillary functions including setting of hearing dates, handling of associated hearing exhibits, distribution of decisions, etc.;
- Maintain knowledge of current relevant state and City land use laws, policies and related state and federal court decisions.
- Report in writing and meet annually with the planning commission and city council for the purpose of reviewing the administration of land use polices and regulatory ordinances, and any amendments the Hearing Examiner suggests improving the performance of the examiner process.

### **3. City Responsibilities**

The City will provide the following:

- arrange for and provide a hearing room and facilities (including recording and sound systems);
- providing public notice of hearings as is required under City ordinance and rule;
- decision copying and distribution services as required under City ordinance and rule;
- current copy of all City land use plans, policies and ordinances and amendments thereto passed during the term of this contract.

#### **4. Qualifications**

A Juris Doctor degree and a license to practice Law in the State of Washington is preferred. Applicants without a Juris Doctor degree may be considered provided that they can demonstrate substantial knowledge of land use and zoning law and meet the minimum experience requirements. All proposers shall be registered with the Washington State Bar Association.

#### **5. Experience**

Minimum of five (5) years of experience in land use and zoning law, preferably as a land use Hearing Examiner or as a land use Attorney representing clients before administrative decision makers such as Hearing Examiners, City Councils, Boards of Adjustment and/or Planning Commissions in the State of Washington

#### **6. Confirmation and Appointment**

This contract will be for a one (1) year term, subject to the confirmation and appointment by the City Council per LMC 2.22.040. Contract shall renew automatically for an additional one-year term, up to a maximum of 5 years. The City may exercise an option after the initial five years to renew for an additional 5 years.

#### **7. Terms & Conditions**

See Attachment A – Sample Contract for proposed Terms & Conditions.



**THIS CONTRACT** ("Contract") is entered into by the City of Lynnwood Washington, (the "City"), and \_\_\_\_\_ (the "Hearing Examiner"), whose address is \_\_\_\_\_. The City is undertaking certain activities related to land use law, real property law, city planning, development and permitting and the provision of Hearing Examiner services and, the City desires to engage the Hearing Examiner to provide Work in connection with such undertakings of the City,

**NOW, THEREFORE**, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

**I. CONTRACT DOCUMENTS -**

The Hearing Examiner shall provide all Work described in this Contract, which consists of the following documents and attached exhibits, each of which are made a part hereof by this reference in the following order of precedence:

1. Contract Amendment(s)
2. Contract, which consists of the Terms and Conditions, Scope of Work, Compensation and other clauses.

**II. CONTRACT TERM**

This contract will be for a one (1) year term, May X, 2019 to May X, 2020 subject to the confirmation and appointment by the City Council per LMC 2.22.040. Contract shall renew automatically for an additional one-year term, up to a maximum of 5 years. The City may exercise an option after the initial five years to renew for an additional 5 years.

**Hearing Examiner's Name**

**The City of Lynnwood**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mayor Nicola Smith

\_\_\_\_\_  
Date

**SECTION 1        GENERAL PROVISIONS**

**1.1    Administration**

The Hearing Examiner shall be responsible to such services, and accomplish such tasks, as identified and designated as the responsibilities of the Hearing Examiner throughout this Contract. The Hearing Examiner shall have the authority to incur the costs and expenses necessary to perform such services and tasks, subject to the limitations specified herein, if any, and subject to approval by the City. The Hearing Examiner shall control and direct the performance of the work pursuant to this Contract, subject to City oversight. The City reserves the right to inspect and review the work of the Hearing Examiner to assure that it has been completed as specified, prior to payment.

**1.2    Payment Procedures**

The Hearing Examiner shall furnish invoices to the contact identified in notices section of this contract. All invoices shall contain the complete description of hours worked and Contract hourly rates, or authorized fees.

**1.3    Compensation**

Compensation shall remain firm for the duration of the Contract and may change only as approved through changes to the applicable Lynnwood Municipal Code.

**1.4    Representations**

The Hearing Examiner represents and warrants 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. If, for any reason, the Hearing Examiner's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Hearing Examiner shall notify the City immediately of such condition in writing.

**1.5    Notices**

Unless otherwise specified in the Contract, all notices or documentation required or provided pursuant to this Contract shall be in writing and shall be deemed duly given when received at the addresses first set forth below via certified or registered first class mail, return receipt requested, personal delivery or electronic mail. However, if any of the following occur: "notice to cure" a default, Hearing Examiner communication in connection with an alleged default, or notice of termination, such notice or communication shall only be delivered personally, or by certified or registered first class mail, return receipt requested.

<b>THE CITY</b>	<b>HEARING EXAMINER</b>
Mayor Nicola Smith	
19100 44 <sup>th</sup> Ave W	
Lynnwood, WA	
425-670-5000	
nsmith@lynnwoodwa.gov	

## **SECTION 2        LEGAL RELATIONS AND INDEMNITY**

### **2.1     Independent Status of Hearing Examiner**

In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent Hearing Examiner relationship shall be created by this Contract. The Hearing Examiner shall be responsible for all federal and/or state tax, industrial, wages, benefits, or other compensation by or on behalf of the Hearing Examiner. The Hearing Examiner, as an independent contractor, shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of the Hearing Examiner shall not be deemed to convert this Contract to an employment contract. It is recognized that the Hearing Examiner may or will be performing professional services during the term for other parties and that the City is not the exclusive user of the services that the Hearing Examiner will provide. The Hearing Examiner shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

### **2.2     Indemnification/Hearing Examiner as City Official**

The Hearing Examiner shall be deemed to be an official within the meaning of Section 2.90.010 of the Lynnwood Municipal Code.

The Hearing Examiner releases and shall defend, indemnify and hold harmless the City, its elected officials, officers, employees, agents and volunteers for any and all claims, demands, losses, negligent acts or omissions, and liabilities (including costs and all attorney's fees) to or by any and all persons and entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Contract to the extent caused by the negligent acts, errors or omissions of the Hearing Examiner, his agents and employees, or by the Hearing Examiner's breach of this Contract.

The indemnification shall apply to the maximum extent permitted by applicable law. However, nothing in the provision shall require the Hearing Examiner to indemnify the City against any liability for damages arising out of bodily injury or property damages caused by or resulting from negligence of the City or its officers, elected officials or employees. City shall protect, defend and indemnify and save harmless the Hearing Examiner, his representatives and other employees from all costs, claims, judgments or awards of damages arising out of the negligent acts or omissions of the City, its officers, elected officials or employees. Further, in the case of concurrent negligence of the Hearing Examiner and the City, each party shall be required to indemnify the other only to the extent of the negligence of the party.

### **2.3     Non-Disclosure Obligation**

The Hearing Examiner shall not, without the prior written consent of the City, disclose to third parties information that is not otherwise subject to public disclosure unless: (1) the information is known to the Hearing Examiner prior to receiving the same directly or indirectly in connection with the Services, (2) the information is in the public domain at the time of disclosure by the Hearing Examiner, or (3) the information is received by the Hearing Examiner from a third party who does not have an obligation to keep the same confidential.

## **SECTION 3        TERMINATION**

### **3.1    Termination for Convenience/Default/Non-Appropriation**

This contract may be terminated with or without cause by either party, by giving thirty (30) days written notice to the other party. Termination shall be effective as of the time stated in the written notice, provided that the Hearing Examiner shall be entitled to compensation under the terms of this Contract to the extent of the actual work performed hereunder prior to the termination effective date, but not to exceed the payment ceiling set forth in the compensation section of this Contract. Either party may waive the Notice period required by this paragraph, provided that any waiver is set forth in writing and signed by the party agreeing to waive the Notice period.

### **3.2    Severability**

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

### **3.3    Non-Waiver of Breach**

No action or failure to act by the City shall constitute a waiver of any right or duty afforded to the City under the Contract; nor shall any such action or failure to act by the City constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the City in writing.

### **3.4    Nonexclusive Contract.**

This shall be a nonexclusive contract. The City reserves the right to appoint additional Hearing Examiners and to contract for additional court services in the future. Nothing herein shall be interpreted to prohibit such future appointments nor to guarantee renewal of this Contract, its level of payment, nor the level of cases forwarded to the Hearing Examiner for future years, regardless of whether the Hearing Examiner shall be within the term of the original appointment. In the event of any such future reappointment, the City reserves the right to renegotiate any and all provisions of this Contract for future contract terms.

## **SECTION 4        SCOPE OF WORK**

### **4.1    Scope of Work**

### **4.2    Professional Requirements**

### **4.3    Management of Hours**

### **4.4    Hearing Examiner's Independence**

### **4.5    Personnel and Financial Review Function**

### **4.6    Reporting Relationship**

### **4.7    Hearing Examiner Pro Tem**

### **4.8    Compensation**

### **4.9    Records and Documentation**