

PROFESSIONAL SERVICES AGREEMENT
(Hearing Examiner)

THIS AGREEMENT is entered into this 13th day of January, 2025, by and between the **CITY OF WINLOCK, WASHINGTON** (hereinafter referred to as the "City") and **J. A. VANDER STOEP, JR.** (hereinafter referred to as the "Hearing Examiner").

WHEREAS, Ordinance No. 933 provides for a hearing examiner to consider certain land use application and conduct public hearings and appeals; and

WHEREAS, the Hearing Examiner has been determined by the City to be qualified to act as and is hereby appointed by the City.

NOW, THEREFORE, the parties agree as follows:

1. Services. The Hearing Examiner shall receive and examine available information, conduct public hearings, prepare findings of fact and conclusions of law in accordance with adopted City regulations and policies, and render decisions in writing, within ten (10) working days after the close of the public hearing, that are clear (complete and internally consistent), factually accurate, and legally sufficient.

- a. The Hearing Examiner will consult with staff on matters relating to clarification or development of City policy which may affect the issues the Examiner is required to resolve.
- b. The Hearing Examiner will comply with all requirements, including time limits of City code and statutory provisions that are applicable to the cases under his jurisdiction.
- c. In the event the Hearing Examiner is disqualified or otherwise unavailable, an alternate will act in his stead. The Hearing Examiner shall identify an available alternate whose name shall be presented to the City for review and approval.
- d. Unless a conflict of interest is identified by the Hearing Examiner, the Hearing Examiner agrees that he will accept all cases assigned as scheduled for hearings or notify the City in writing at least twenty (20) days prior to the hearing of his inability to preside over the hearing.
- e. The Hearing Examiner will view all sites when deemed necessary.
- f. The Hearing Examiner will provide his own transportation to and from hearings, and to and from sites which he will view. The Hearing Examiner will provide his own office and office equipment, and also will provide his own clerical services for typing the decision and any personal correspondence.

- g. The City will provide facilities for the conduct of hearings, including hearing room and recording, the temporary workspace on the day of the hearing. The City will also provide staff support at the hearing and provide the Hearing Examiner with a comprehensive staff report and will carry out all public notice requirements of City code.

2. Conflict of Interest. The Hearing Examiner agrees to disqualify himself as to any application in which the Hearing Examiner has a personal or financial interest. The Hearing Examiner agrees to conform to the requirements of the Appearance of Fairness Doctrine, Chapter 42.36 RCW, during the pendency of any quasi-judicial proceeding.

3. Procedures and Exhibits.

- a. Any person acting as Hearing Examiner will explain the published rules and procedures to the public in attendance at the hearing.
- b. Any person acting as Hearing Examiner will be responsible for any and all exhibits accepted into the record, and to mark each exhibit with the date, case, and his/her signature. All such exhibits will be entrusted to the City after the Hearing Examiner has rendered his final decision on the matter.

4. Recesses and Continuances. The Hearing Examiner agrees to set all recessed or continued hearings to a time certain whenever possible. All such rescheduling will be coordinated with the City to ensure that adequate facilities will be available.

5. Payments. The City will pay the Hearing Examiner in performing the duties and responsibilities of the Hearing Examiner, not to exceed \$20,000 for the term of the contract, as follows:

- a. Hourly rate of Three Hundred Fifty and 00/100 Dollars (\$350.00) per net hour (logged at a 0.1-hour resolution) for time in the City of Winlock conducting field investigation, public hearing time (measured between start and end of hearing day), and decision preparation; and
- b. Direct cost for expenses, such as courier charges and special postage.

6. Billing. The Hearing Examiner shall submit an invoice to the City for each hearing and/or appeal conducted, including all related time and expenses, and indicating the amount due, within thirty (30) days of the completion of all related work.

7. Miscellaneous.

- a. Assignment and Subcontracting. Unless otherwise agreed to between the parties, no portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of City.

- b. Independent Hearing Examiner. The services furnished by the Hearing Examiner are as an independent contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder, and all services performed shall be made and performed pursuant to this agreement by Hearing Examiner as an independent contractor. Hearing Examiner acknowledges that the entire compensation for this agreement is specified herein, and Hearing Examiner is not entitled to any City benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to City of Winlock employees.
- c. No Guarantee of Employment. The performance of all or part of this Agreement by Hearing Examiner shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of Hearing Examiner or any employee of Hearing Examiner or any subcontractor or any employee of any subcontractor by City at the present time or in the future.
- d. Taxes. Hearing Examiner understands and acknowledges that City will not withhold federal or state income taxes. Where required by state or federal law, Hearing Examiner authorizes City to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by Hearing Examiner will be reported to the Internal Revenue Services at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of Hearing Examiner to make the necessary estimated tax payments throughout the year, if any, and Hearing Examiner is solely liable for any tax obligation arising from Hearing Examiner's performance of this agreement. Hearing Examiner hereby agrees to indemnify City against any demand to pay taxes arising from Hearing Examiner's failure to pay taxes on compensation earned pursuant to this agreement.
- e. Regulations and Requirement. This agreement shall be subject to all laws, rules, and regulations of the United States of America, the state of Washington, and political subdivisions of the state of Washington.
- f. Right to Review. This Agreement is subject to review by any federal or state auditor. City or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the City. Such review shall occur with notice, and may include, but not be limited to, on-site inspection by City agents or employees, inspection of all records or other materials which City deems pertinent to the agreement and its performance, and any and all communications with or evaluations by service recipients under this agreement. Hearing Examiner shall preserve and maintain all financial records and records relating to the performance of work under this agreement for three (3) years after Agreement termination, and shall make them available for such review, within the City of Winlock, Washington, upon request.

- g. Modifications. Either party may request changes in the agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.
- h. Termination for Default. If the Hearing Examiner defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, City may, by depositing written notice to Hearing Examiner in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, Hearing Examiner shall not be entitled to receive any further payments under the Agreement until work called for has been fully performed. Any extra cost or damage to City resulting from such default(s) shall be deducted from any money due or coming due to the Hearing Examiner.

If a notice of termination for default has been issued and it is later determined for any reason that Hearing Examiner was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued.

- i. Withholding Payment. In the event Hearing Examiner has failed to perform any substantial obligation to be performed by Hearing Examiner under this agreement and said failure has not been cured within the times set forth in this agreement, then City may, upon written notice, withhold all moneys due and payable to Hearing Examiner, without penalty, until such failure to perform is cured or otherwise adjudicated.
- j. Notice. Except as set forth elsewhere in this agreement, for all purposes under this agreement, except for service of process, notice shall be given by Hearing Examiner to the City for whom services are rendered, to-wit: P. O. Box 777, Winlock, Washington, 98596 Attention: Mayor and City Council.

Notice to Hearing Examiner for all purposes under this agreement shall be given at P. O. Box 867, Chehalis, Washington, 98532. Notice may be given by delivery or by depositing in the U.S. mail, first class, postage prepaid.

- k. Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstance(s) is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.
- l. Waiver. Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

m. Entire Agreement This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions, or understandings between the parties.

8. Indemnification and Hold Harmless. The Contractor shall protect, defend, indemnify, and save harmless the City, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omission of the Hearing Examiner. The Hearing Examiner agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agent. For this purpose, the Hearing Examiner, by mutual negotiation, hereby waives, as respects the City only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the City incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Hearing Examiner.

The City shall protect, defend, indemnify, and save harmless the Hearing Examiner, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omission of the City. The City agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the City, by mutual negotiation, hereby waives, as respects the Hearing Examiner only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the Hearing Examiner incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provision of this article, all such fees, expenses, and costs shall be recoverable from the City.

The Hearing Examiner will indemnify, defend, and hold the City (and its elected officials, officers, employees, successors, assigns, insurers, licensees, distributors, independent contractors, and agents) harmless from all claims, damages, losses, and expenses (including reasonable attorneys' fees incurred on such claims and in proving the right to indemnification) arising out of or resulting from any claim, action, or other proceeding that is based upon (a) the Hearing Examiner's breach of any obligations, representations, or warranties under the Agreement, (b) the Hearing Examiner's outside business activities, or (c) the infringement or misappropriation by the Hearing Examiner of any foreign or United States patent, copyright, trade secret, or other proprietary right in results.

9. Counterparts. The Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document

10. Term/Cancellation. This Agreement shall become effective upon enactment by the City and shall have a term of three (3) years. This Agreement may be cancelled by either party upon thirty (30) days written notice to the other party.

In the event of non-allocation of sufficient funds by Winlock City Council, notice of said non-allocation shall be provided to the Hearing Examiner and the Agreement terminated thirty (30) days hence.

IN WITNESS WHEREOF, the undersigned have set their hands the day and date set out next to their signatures.

Date: 1/13/2025 Date: 1/14/25

CITY OF WINLOCK

By 

Brandon Svenson, Mayor

HEARING EXAMINER



J. A. Vander Stoep, Jr.

Approved as to form:



Marissa Y. Jay, City Attorney #55593