

**INTERLOCAL AGREEMENT FOR
CITY OF MERCER ISLAND AND HEARING EXAMINER**

The City of Mercer Island, a Washington municipal (hereinafter "City" and the City of Seattle through its Office of Hearing Examiner, the address for which is P.O. Box 94729, Seattle, WA 98124-4729 (hereinafter "Examiner") agree as follows:

I. PURPOSE

- (A) The City wishes to appoint Examiner as the Mercer Island Hearing Examiner pursuant to Mercer Island City Code Chapter 3.40 ("MICC 3.40").
- (B) The City intends that this interlocal agreement ("Agreement"), together with the provisions of MICC 3.40, define the above position as Mercer Island Hearing Examiner for purposes of Washington State law and City ordinances.
- (C) The governing bodies of each of the parties hereto have determined to enter into this Agreement as authorized and provided for by RCW 39.34 and other Washington law, as may be amended.

II. SERVICES

- (A) Examiner shall perform the duties of a Hearing Examiner for the City. Examiner shall take all actions to fulfill the obligations of the City for a Hearing Examiner as established by state law or City ordinances.
- (B) Examiner agrees that all services and all duties incidental or necessary thereto, shall be conducted and performed diligently and completely and in accordance with professional standards of conduct and performance.
- (C) Hearing Examiner services under this Agreement shall be provided by Sue Tanner and Anne Watanabe. Examiner is not responsible for or authorized under this Agreement to have Hearing Examiner services performed by any other person; provided that, the City Manager and Examiner may agree in writing that another person could provide Hearing Examiner services on behalf of Examiner. No assignment or transfer of this Agreement, nor of any interest in it, shall be made by the City or by Examiner.
- (D) In order that the City may evaluate the functions and cost effectiveness of Hearing Examiner services, Examiner shall prepare a report to the City Manager on its Hearing Examiner activities for the City on an annual basis.

III. COMPENSATION

- (A) Examiner shall be compensated for Hearing Examiner services provided to the City at \$105 per hour. If the City opts to use Examiner staff services, Examiner will be compensated at \$30 per hour for such services. If the City opts to use web page formatting services, Examiner will be compensated at \$30.00 per hour for such services. Examiner shall be compensated for staff support as needed for the preparation of the Findings of Fact and Conclusions of Law, together with the Decision and/or Recommendation, at the rate of \$30 per hour.
- (B) Examiner shall be reimbursed for Examiner's direct expenses advanced on the City's behalf. Representative examples of such expenses include mileage and mailing costs, but not costs for materials. Examiner shall be compensated for mileage at the rate established in federal Internal Revenue Service regulations. Rather than being reimbursed for travel time between the Examiner's Office and Mercer Island, the Examiner shall be paid a Travel Fee of \$20.00 per trip to Mercer Island, which shall include any site visits.
- (C) The above fees and charges include all labor, materials, and expenses provided and/or required under this Agreement.
- (D) Examiner will submit a monthly billing statement to the City itemizing the hours spent performing Hearing Examiner functions, time spent for staff compensable under this Agreement, and any direct expenses which may be charged to the City under this Agreement. Travel Fees and mileage shall be reimbursed as stated in Section III.(E) below. Examiner shall be paid monthly within 30 days after the City receives the Examiner's detailed bill.
- (E) Each individual providing Hearing Examiner services under this Agreement shall separately submit to the City a monthly statement detailing the mileage and Travel Fees for the number of trips to Mercer Island for which the individual is eligible for reimbursement. Each individual providing Hearing Examiner services under this Agreement shall be paid directly and monthly within 30 days after the City receives the individual's detailed request for reimbursement.

IV. TERM

- (A) This contract shall take effect on the date it is signed by the last party signing the contract, and shall continue in effect until amended by the parties or terminated as provided in this Agreement.

- (B) Either party may terminate this Agreement at any time, with or without cause, by sixty (60) days written notice, except as otherwise provided in this Agreement.
- (C) If the City has cause for termination of this Agreement, the City shall promptly give written notice of such cause to Examiner. Termination under this subparagraph shall be effective as of the time stated in the written notice, which may be immediately.
- (D) Termination shall be effective as of the time stated in the written notice, provided that Examiner shall be entitled to compensation under the terms of this Agreement to the extent of the actual work performed hereunder prior to the termination effective date. Notice periods contained in this paragraph may be waived in writing.

V. GENERAL ADMINISTRATION AND MANAGEMENT

- (A) The City Attorney, or designee, shall review and approve the monthly compensation for Examiner. Examiner will report to the City Manager, or designee, regarding performance of services under this Agreement.
- (B) For Development Services Group ("DSG") matters, Examiner will prepare typed Findings of Fact and Conclusions of Law, together with the Decision and/or Recommendation. The Examiner will deliver all Hearing Examiner reports to DSG for distribution to parties of record.
- (C) For matters originating in other City Departments, 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.

VI. ADDITIONAL SERVICES

- (A) Upon mutual agreement of the parties, Examiner shall prepare materials for City staff to use in community education events or as otherwise requested.

VII. ADMINISTRATION OF HEARINGS

- (A) The DSG Director, or designee, or other appropriate City department, will coordinate the scheduling of public hearings. Once a hearing has begun, the presiding Hearing Examiner shall have the discretion to decide whether that hearing may be continued to another date or time as necessary.

- (B) City staff will provide Examiner copies of all necessary documents without charging for copies.
- (C) Hearing Examiner hearings shall be conducted in accordance with the City of Seattle Hearing Examiner Rules of Practice and Procedure as amended.

VIII. PROFESSIONAL REQUIREMENTS

- (A) Examiner will keep current on issues relevant to the Hearing Examiner, including attendance at continuing education programs emphasizing planning regulations and land use legal issues.
- (B) Although Examiner is not a City employee, Examiner agrees to follow the Guidelines in the Mercer Island Code of Ethics in the Employee Handbook, attached hereto as Exhibit A.
- (C) Examiner agrees that during the term of this Agreement, 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) Examiner, during the term of this Agreement, agrees that Examiner will not appear in any proceeding in which the City or a City officer is a party, including before the City Planning Commission, City Design Commission, and City Council, except as a witness under subpoena, without the prior written consent of the City Manager.
- (E) In view of the special relationship between Examiner and the City under this Agreement, for one year after the expiration or termination of this Agreement, Examiner agrees to not appear as a witness or agent in any matter or case adverse to the City nor to appear as a witness or agent of a private party before the City Hearing Examiner, the City Planning Commission, the City Design Commission, or the City Council.

IX. 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 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.

X. INDEPENDENT CONTRACTOR

Examiner is and shall be at all times during the term of this Agreement an independent contractor and not an employee of the City. Examiner agrees that it is solely responsible for paying federal income tax and other taxes, fees or charges. Except for facilities the City provides under the Rules of Procedure or this Agreement, Examiner is responsible for providing the office space and clerical support necessary for the performance of services under this Agreement. City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance or unemployment compensation programs or otherwise assuming the duties of an employer with respect to Examiner, or any employee of Examiner.

XI. OWNERSHIP OF WORK PRODUCT

All information, records, files, and documents produced under this Agreement shall belong to the City.

XII. SUCCESSORS AND ASSIGNS

Examiner shall not assign, transfer, convey, pledge or otherwise dispose of this Agreement or any part of this Agreement.

XIII. NONDISCRIMINATION

No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age, except minimum age and retirement provisions, marital status, sexual orientation, or the

presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a disabled person.

XIV. INDEMNITY

The Examiner 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 omissions of the Examiner, its officers, employees and agents in performing this Agreement.

The City shall protect, defend, indemnify and save harmless 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 omissions of the City, its officers, employees or agents in performing this Agreement.

Except as provided below, in the event the parties are determined jointly liable to any claimant or litigant, each party shall bear responsibility for its own defense, including the payment of all attorney fees and costs associated therewith, and shall satisfy any judgment or settlement to the extent fault is allocated to such party.

The Examiner does not assume liability or responsibility for, or in any way release the City from liability or responsibility that arises, in whole or in part, from the existence or effect of the City's ordinances, code, policies, rules or regulations. If any cause, claim or action of any kind is commenced in which the enforceability and/or validity of any City ordinance, code, policy or regulation, including its constitutionality, is at issue, the City shall defend the same at its sole cost and expense, and if judgment is entered, or damages are awarded against the Examiner, or the Examiner and City jointly, the City shall promptly satisfy the same.

XV. NONEXCLUSION CONTRACT

This shall be a nonexclusive contract. The City reserves the right to appoint additional hearing examiners and to contract for alternative services in the future. Nothing herein shall be interpreted to prohibit such future appointments, or to guarantee a level of payment under this contract, or the level of cases forwarded to Examiner for future years.

XVI. WRITTEN INTEGRATION

This Agreement, together with any attachments and addenda represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly

signed by both parties hereto. Examiner expressly waives any rights not specifically incorporated herein and expressly waives any right or benefit which Examiner might claim under the City Personnel Code.

XVII. COMPLIANCE WITH LAWS

Examiner shall comply with all applicable State, Federal and City laws, ordinances, regulations, and codes.

XVIII. FUTURE SUPPORT

City makes no commitment and assumes no obligations for the support of Examiner activities except as set forth in this Agreement.

XIX. NOTICE

Notice given pursuant to this contract shall be given in writing by directing it to: the Mercer Island City Manager at 9611 SE 36th Street, Mercer Island, Washington 98040, or to City of Seattle, Office of Hearing Examiner addressed at P.O. Box 94729, Seattle, WA 98124-4729, or at such other address as Examiner may request.

XX. SEVERABILITY

In the event that any provision of this Agreement shall be held invalid, the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement which is made on the date last written below.

CITY OF SEATTLE
OFFICE OF HEARING EXAMINER

By: 
Sue A. Tanner, Hearing Examiner

Date: 2/26/14

CITY OF MERCER ISLAND


By: 
Noel Treat, City Manager

Date: 3/3/14

ATTEST:


Allison Spietz
Mercer Island City Clerk

APPROVED AS TO FORM:


Katie H. Knight
Mercer Island City Attorney
Christina M Schuck
Assistant City Attorney