



Request for Proposals for City of Cle Elum Hearing Examiner Services

**Proposals must be received by the City no later than 3:00 P.M. on Friday, July 1, 2022
to Kathi Swanson, City Clerk at KSwanson@CleElum.gov**

GENERAL INFORMATION

This Request For Proposals (“RFP”) by the City of Cle Elum (“City”) invites submittals from qualified individuals, firms, and organizations to provide professional hearing examiner services. The successful candidate shall be appointed initially for a one-year term. Thereafter, upon reappointment and through a mutually agreeable contract amendment, the City and Hearing Examiner may extend the contract.

BACKGROUND

The City of Cle Elum is organized as an optional code city under Title 35A RCW and is governed as a Mayor-Council form of government under Chapter 35A.12 RCW. Cle Elum has seven elected City Council members, an elected Mayor, and an appointed City Administrator who also serves as the Building Official. The population of Cle Elum has been just under 2,000 for quite some time, but the City and surrounding areas are now experiencing significant growth and the population of the City could reach 7,500 or more in the near future. The City is a party to two large development agreements which are expected to drive this rapid increase in the City’s population.

- In 2001, the City entered into an annexation and development agreement commonly known as “Bullfrog Flats” to develop up to 1,384 dwelling units, a business park, and related parks, trails, and amenities. The land subject to this development agreement was recently sold to a new developer and an application to make major modifications to the development agreement are likely forthcoming.
- In 2011, the City entered in an annexation and development agreement for a planned mixed-use development commonly known as “City Heights” to develop up to 962 dwelling units and related parks, trails, and amenities. The City has recently approved preliminary plat applications for Phase 1 and Phase 2 of this development.

DUTIES RELATED TO HEARINGS AND DECISIONS

Chapter 2.60 of the Cle Elum Code (“CEMC”) establishes the Office of Hearings Examiner of the City of Cle Elum and CEMC 14.30 identifies the types of permits and appeals to be heard by the examiner. The purpose of Chapter 2.60 CEMC is as follows:

The purposes of this chapter are to establish a Hearings examiner system to review certain type of project permits and appeals in the city of Cle Elum, to ensure procedural due process, to provide greater separation from the legislative decisions on land use regulations and administration of land use regulations, and to provide for a process that is effective for such matters as may be assigned to the hearings examiner’s jurisdiction.

In addition, Chapter 2.13 CEMC establishes the Office of the Code Enforcement Hearing Examiner and provides as follows:

The purpose of this chapter is to provide a system of code enforcement which will address the following objectives:

- A. The need to separate the application of regulatory controls from planning;*
- B. The need to protect the health, safety and welfare of the community;*
- C. The need to assure the principles of fairness and due process of law in regulatory enforcement;*
- D. The need to provide a civil enforcement system as a means to enforce Cle Elum Municipal Code violations.*

The individual, firm, or organization selected will serve in both of these capacities and is expected to hear all matters as delegated to the position through the Cle Elum Code or other applicable laws or regulations.

The City Planning Department is charged with administration and enforcement of all land use, site development, and environmental regulations in Cle Elum. The City provides clerk assistance in preparation of cases, and staff support during hearings including preparation of legal notices, providing electronic mailing and distribution of notices and decisions, and providing a staff recommendation for each application before the Hearing Examiner. Electronic copies of staff recommendations and records provided for the Hearing Examiner’s use will be provided via e-mail in electronic format. Staff will also facilitate hearing audio/visual recordings.

All hearings must be consistent with the requirements of due process and the Appearance of Fairness

Doctrine, in addition to the requirements of the Cle Elum Code. The Hearing Examiner will render clear, defensible, written decisions that include detailed findings of fact and conclusions of law, with citations to the record and cogent legal analysis consistent with applicable law.

Hearing Examiner duties include, but are not limited to:

1. Providing Hearing Examiner Rules of Procedure that govern the conduct of proceedings and the issuance of recommendations and decisions. Such Rules of Procedure will be provided to the City for City review and approval;
2. Hearing cases as assigned and preparing clear, defensible written decisions or recommendations; and
3. It may be necessary for the Hearing Examiner to visit proposed development sites prior to rendering a decision or recommendation.

TECHNOLOGICAL REQUIREMENTS

1. All permit files, documents, and hearing records are processed and transmitted electronically, including document transfers to the Hearing Examiner. Case documents may be exchanged through e-mail by means of .pdf or Microsoft Word documents or through a file sharing site such as Dropbox.
2. The Hearing Examiner must have adequate technology and equipment to receive large volumes of records in electronic form. No paper copies of permit files, hearing records, or submitted exhibits will be provided to the Hearing Examiner from the City; and
3. Absent extenuating circumstances, hearings will be held virtually. The Hearing Examiner must have adequate technology and equipment to ensure successful audio and video connection capabilities.

INSURANCE REQUIREMENTS

Prior to beginning work, the Hearing Examiner and Pro Tempore Hearing Examiner will be required to procure and maintain at their expense, for the duration of the contract, insurance coverage as described in the Contract for Services. Evidence of insurance must be presented to the City Administrator's Office prior to execution of the contract.

CONFLICTS OF INTEREST

The Hearing Examiner and Pro Tempore Hearing Examiner shall be prepared to recuse him or herself from any case where a potential conflict of interest exists. The Hearing Examiner will conduct conflicts check on each case assigned before completing any work on the case. In the event there is a conflict, the Hearing Examiner will recommend a pro tempore Hearing Examiner, if one has not already been identified.

CONTRACT REQUIREMENTS

A professional services agreement will be executed to contract for these services. A proposed Agreement (Contract) is attached hereto in Appendix A though further revisions may still be made by the City. Proposals should incorporate this proposed agreement or proposed modifications to it as a part of their proposal.

SUBMITTAL REQUIREMENTS

Proposals shall be well organized and should provide the following information in a clear and concise manner. Please note that all documents submitted are a public record and subject to disclosure, unless exempt under state law.

1. A transmittal letter that identifies the contents of the proposal and pertinent contact information.
2. A description of the individual, firm, or organization proposing to provide hearing examiner services to the City.
3. A resume highlighting the experience and professional credentials of the person proposed to serve as the Cle Elum Hearing Examiner and the Examiner Pro Tempore (if proposed), including the bar number, and areas of expertise.
 - a. Please note that the proposed Hearing Examiner must have a Juris Doctor degree and be licensed in good standing to practice law in the State of Washington.
4. A description of the proposed Hearing Examiner's relevant experience as a Hearing Examiner, including experience with land use and zoning law, environmental law, shoreline law, building codes, and related hearing processes.
 - a. Please identify all communities that the proposed Hearing Examiner has provided examiner services to during the past five years including the types and approximate number of cases by year.
 - b. A description of the extent Applicant's familiarity with Cle Elum's municipal code and processes and/or of communities similar to Cle Elum.
 - c. A digital copy or link to a recent decision written by the proposed Hearing Examiner involving a larger-scale or more complex development and a decision involving a smaller sale and more routine project or appeal.
 - d. Please note that Applicants must disclose if they have ever been the subject of a complaint to a professional organization or regulatory body and describe the nature of the complaint and the outcome.

5. A description of the proposed services to be provided and the availability of the person(s) that will provide these services. Please include each of the following tasks:
 - a. Prehearing conferences.
 - b. Regular scheduled hearings including continuations (in person, virtual, and hybrid).
 - c. Drafting of decisions and recommendations.
 - d. Pre/Post Hearing Orders (including but not limited to orders on requests for clarification, requests for reconsideration, requests for additional exhibits to be added to the record); and
6. The proposed method of compensation including the hourly rates of all persons that may be involved in the provision of services, travel costs, and all other costs that would be billed to Cle Elum if the proposal is accepted.

One electronic copy of the proposal must be received by the City no later than 3:00 P.M. on Friday, July 1, 2022 to Kathi Swanson, City Clerk at KSwanson@CleElum.gov. Interviews will be scheduled thereafter.

For more information about the Cle Elum Office of Hearing Examiner and the Office of Code Enforcement Hearing Examiner, please contact City Administrator Rob Omans at ROmans@CleElum.gov. or City Planning Consultant Gregg Dohrn at GDohrn@CleElum.gov.

Appendix A
Proposed Contract for Professional Services

CONTRACT FOR SERVICES
City of Cle Elum and _____

This Agreement is entered into by and between the City of Cle Elum, Washington, a municipal corporation of the State of Washington, hereinafter referred to as “the City,” and _____, hereinafter referred to as “the Contractor.”

WHEREAS, the City has determined the need to have certain services performed for its citizens; and

WHEREAS, the City desires to have the Contractor perform such services pursuant to certain terms and conditions.

NOW, THEREFORE, IN CONSIDERATION OF the mutual benefits and conditions set forth below, the parties hereto agree as follows:

1. Scope of Services to be Performed by Contractor. The Contractor shall perform those services described on Exhibit A attached hereto and incorporated herein by this reference as if fully set forth. In performing such services, the Contractor shall at all times comply with all federal, state, and local statutes, rules, and ordinances applicable to the performance of such services and the handling of any funds used in connection therewith.

2. Compensation and Method of Payment. The City shall pay the Contractor for services rendered within ten (10) days after City Council voucher approval. The City shall pay the Contractor for services rendered.

[[Compensation and Method of Payment to be determined once RFP responses are received.]]

The Contractor shall complete and return Exhibit B, Taxpayer Identification Number, to the City.

3. Duration and Termination of Agreement. This Agreement shall be in full force and effect for a period commencing on the date by which this Agreement is signed by both parties.

The Agreement will automatically renew unless amended by written agreement. This Agreement may at any time be terminated by the City upon giving to the Contractor thirty (30) days written notice of the City’s intention to terminate the same.

4. Ownership and Use of Documents. All documents, drawings, specifications, and other materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not.

5. Independent Contractor. The Contractor and the City agree that the Contractor is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither the Contractor nor any employee of the Contractor shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. The City shall not be responsible for paying, withholding, or otherwise deducting any customary state or federal payroll deductions, including but not limited to FICA, FUTA, state industrial insurance, state workers compensation, or otherwise assuming the duties of an employer with respect to the Contractor or any employee of the Contractor.

The Contractor shall obtain and maintain a valid City business license.

6. Indemnification and Insurance. The Contractor shall indemnify the City and procure insurance coverage as outlined in Exhibit C attached hereto and incorporated herein by this reference as if fully set forth.

7. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review, or audit by law during the performance of this Agreement. The City shall have the right to conduct an audit of the Contractor's financial statements and condition and the right to a copy of the results of any such audit or other examination performed by or on behalf of the Contractor.

8. Discrimination Prohibited. The Contractor shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Contractor under this Agreement on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental, or physical handicap.

9. Assignment and Subcontract. The Contractor shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.

10. Entire Agreement. This Agreement contains the entire agreement between the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. Either party may request changes to the Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

11. Notices. Notices to the City of Cle Elum shall be sent to the following address:

City Clerk
City of Cle Elum
119 West First Street
Cle Elum, WA 98922
Phone number: (509) 674-2262

Notices to the Contractor shall be sent to the following address:

[INSERT]

12. Applicable Law; Venue; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in Kittitas County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees, expert witness fees, and costs of suit.

CITY OF CLE ELUM, WASHINGTON

[[NAME/BUSINESS]]

By: _____
Jay McGowan, Mayor

By: _____
[NAME]

Date: _____

Date: _____

Attest/Authenticated:

Kathi Swanson, City Clerk

Approved As To Form:

Alexandra L. Kenyon, City Attorney

EXHIBIT A
SCOPE OF SERVICES

The Contractor shall furnish services in a commercially reasonable manner including, but not limited to, the following:

The Request for Proposals for Cle Elum Hearing Examiner Services is incorporated by this reference.

**EXHIBIT B
TAX IDENTIFICATION NUMBER**

CITY OF CLE ELUM
119 West First Street
Cle Elum, WA 98922
Phone number: (509) 674-2262

In order for you to receive reimbursement from the City of Cle Elum, we must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires us to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of Cle Elum before or along the submittal of the first billing voucher.

Please check the appropriate category:

Corporation Partnership Government

Agency

Individual/Proprietor Other (please explain)

TIN#: - - - - - - - - - -

SS#: - - - - - - - - - -

Print Name:

Print Title:

Business Name:

EXHIBIT C INDEMNIFICATION AND INSURANCE REQUIREMENTS

Indemnification / Hold Harmless

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

A. Insurance Term

The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

B. No Limitation

The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

The Contractor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be as least at broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

D. Minimum Amounts of Insurance

The Contractor 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, and \$2,000,000 products-completed operations aggregate limit.
3. Professional Liability insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

E. City Full Availability of Contractor Limits

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

F. Other Insurance Provision

The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

G. Acceptability of Insurers

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

H. Verification of Coverage

The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Contractor before commencement of the work. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.

I. Subcontractors' Insurance

The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

J. Notice of Cancellation

The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

K. Failure to Maintain Insurance

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