

**SULTAN CITY COUNCIL  
AGENDA ITEM COVER SHEET**

---

**ITEM NO:** C-12  
**DATE:** January 22, 2009  
**SUBJECT:** Amend Hearing Examiner Contract with John Galt  
**CONTACT PERSON:** Deborah Knight, City Administrator

**ISSUE:**

The issue before the City Council is to authorize an amendment to the hearing examiner contract with John Galt (Attachment A). The purpose of the amendment is to incorporate production and payment for an annual report produced by Mr. Galt.

**STAFF RECOMMENDATION:**

Authorize the Mayor to sign the First Amendment with John Galt for hearing examiner services.

Authorize City staff to pay \$30.00 for the 2007 annual report and \$30.00 for the 2008 annual report produced for the City by Mr. Galt.

**SUMMARY:**

The City has a professional services contract with John Galt to provide hearing examiner services to the City (Attachment B).

In 2008, Mr. Galt submitted his 2007 annual report and a \$30.00 invoice for payment. The annual report (Attachment C) outlines the cases heard by the hearing examiner and a discussion of code issues identified by the examiner throughout the year.

Unfortunately, the contract and scope of work with Mr. Galt did not include the annual report. Since the City did not request the annual report, City staff were unable to pay the invoice without Council approval. The intent was to return to Council in 2008 with a contract amendment and authorization for the annual report. A contract amendment was never submitted for approval in 2008. Mr. Galt contacted the City in January 2009 to find out the status of the unpaid invoice and contract amendment.

The attached contract amendment provides for creation of an annual report at the appropriate hourly billing rate. City staff are also requesting approval to pay for the

2007 and 2008 annual reports. Future reports will be processed for payment under the approved contract amendment.

**FISCAL IMPACT:**

The community development professional services budget includes funding for hearing examiner services. The annual report will be incorporated into the existing budget. There is no known impact to the 2009 budget.

**ALTERNATIVES:**

1. Authorize the Mayor to sign the First Amendment with John Galt for hearing examiner services to include the production and payment for an annual report. Authorize city staff to pay for the 2007 and 2008 annual reports.

The annual report provides important feedback to the City Council on development code issues identified by the hearing examiner. The Council has used past annual reports to develop code amendments. The annual report is a cost effective tool and outside analysis of the city's codes.

2. Do not authorize the Mayor to sign the First Amendment with John Galt for hearing examiner services to include the production and payment for an annual report. Do not authorize city staff to pay for the 2007 and 2008 annual reports. Direct staff to areas of concern.

This action implies the City Council has questions and/or concerns regarding the amendment and production of the annual report.

3. Do not authorize the Mayor to sign the First Amendment with John Galt for hearing examiner services to include the production and payment for an annual report. Do not authorize city staff to pay for the 2007 and 2008 annual reports.

This action implies the City Council is not prepared or is not interested in having the hearing examiner prepare an annual report for the City.

**RECOMMENDED ACTION:**

Authorize the Mayor to sign the First Amendment with John Galt for hearing examiner services.

Authorize City staff to pay for the 2007 and 2008 annual reports produced for the City by Mr. Galt.

## **ATTACHMENTS**

- A - First Amendment Hearing Examiner Contract with John Galt
- B - Contract for Services with John Galt
- C – 2007 Annual report

## Attachment A

### **FIRST ADDENDUM BY AND BETWEEN THE CITY OF SULTAN AND JOHN GALT**

**THIS FIRST ADDENDUM** is made by and between the City of Sultan (hereinafter referred to as “City”), a Washington Municipal corporation, and John Galt(hereinafter referred to as “Service Provider”) collectively the “Parties”.

**WHEREAS**, on November xx, 2007, the Parties entered into that certain Agreement for Services (“Agreement”) for the provision of hearing examiner services ; and

**WHEREAS**, the Service Provider has provided the City with an annual report in 2008; and

**WHEREAS**, the City desires to have an annual report on Hearing Examiner services provided and compensate the Service Provider for preparing the report; and

**NOW, THEREFORE, IN CONSIDERATION OF** the mutual promises, terms and conditions set forth in the Agreement and contained herein, the Parties hereby agree as follows:

**Section 1. Amendment of Section 2** of the Agreement. Section 2 - Duties of the Agreement is hereby revised to provide in its entirety as follows:

At the beginning of each calendar year and no later than February 1, Galt will prepare an annual report. The annual report shall provide:

- a. A summary and list of the cases heard by the Hearing Examiner in the previous 12-month period (Hearing Activity).
- b. An analysis of cases heard, discussion of issues and any recommended changes to the Sultan Municipal Code, design standards or development regulations.

**Section 2. Effect of Addendum.** This First Addendum is in addition to the Agreement. Except as otherwise provided herein, the provisions of this First Addendum modify, but do not supersede the provisions of the Agreement. Except as otherwise provided herein, each provision of the Agreement shall continue in full force and effect as if this First Addendum did not exist. Except as otherwise provided herein, capitalized words and phrases shall have the meanings ascribed to them in the Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Addendum to be signed and executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF SULTAN:**

By: \_\_\_\_\_  
Mayor Carolyn Eslick

**CONTRACTOR:**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Taxpayer ID #: \_\_\_\_\_

**ATTEST/AUTHENTICATED:**

By: \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Office of the City Attorney

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
CITY OF SULTAN AND JOHN E. GALT  
FOR HEARING EXAMINER SERVICES**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007 in Snohomish County, Washington, by and between the CITY OF SULTAN, hereinafter called the "City", and JOHN E. GALT of 927 Grand Avenue, Everett WA 98201, hereinafter called "GALT" or "Hearing Examiner".

WHEREAS, the Sultan Municipal Code in Chapter 2.26 creates the Office of Hearing Examiner for certain land use hearings and processes in the City; and

WHEREAS, Galt has experience conducting such hearings and rendering decisions in accordance with applicable state and local land use law and policy; and

WHEREAS, Galt has represented, and by entering into this Agreement now represents, that, when assigned to work on any City project, Galt will be in full compliance with the statutes of the State of Washington governing activities to be performed and that Galt is fully qualified and properly licensed to perform the work to which it will be assigned.

**NOW THEREFORE**, in consideration of the terms, conditions, covenants and performances contained herein below, the parties hereto agree as follows:

**1. PURPOSE**

The purpose of this agreement is to provide the City with Hearing Examiner Services during the term of the contract. The general terms and conditions of the relationship between the City and Galt are specified in this agreement.

**2. DUTIES**

**A. HEARING EXAMINER DUTIES:**

1. The Hearing Examiner shall perform all of the duties set forth in Chapter 2.26 of the Sultan Municipal Code and all other actions reasonably necessary to fulfill the obligations of the position, as established by state statute or City ordinance.

2. Galt shall serve as hearing examiner for the City on those cases assigned to him by the City. In this capacity he shall receive and examine available information, including but not limited to, application materials, environmental checklists and impact statements, staff reports, and citizen comments. He shall conduct open record hearings and prepare a record thereof. He shall enter findings of fact and conclusions based thereupon; and shall render a decision and/or recommendations as provided by City Ordinance. Galt shall provide a signed original of each decision/recommendation to the City.

3. Galt may, at his sole discretion, excuse himself from hearing any item that may pose a conflict of interest on his part or which may otherwise conflict with previously scheduled obligations. Galt shall endeavor to give the City as much advanced notice as possible of his inability to hear any item so that a pro tem hearing examiner can be selected.

4. All required open record hearings shall be held within the City.

5. Galt agrees to render his services as required under this contract pursuant to the time constraints identified in City ordinances and rules.

6. Galt shall keep accurate time records and shall provide such records to or for review by the City whenever requested by the City.

7. Upon termination, the City may take possession of all records and documents in the Hearing Examiner's possession pertaining to or arising out of the Hearing Examiner's duties under this Agreement.

8. Ownership of Work Product.

Any and all documents, drawings, reports, and other work product produced by the Hearing Examiner under this Agreement shall become the property of the City upon payment of the fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Hearing Examiner.

9. Assignment and Subcontracting.

No portion of this contract may be subcontracted to any other individual, firm or entity without the express and prior written approval of the City.

B. CITY DUTIES:

1. The City shall arrange for and provide: a hearing room and facilities (including recording and sound systems); public notice of hearings as required under City ordinance and rule; a hearing clerk or equivalent for each hearing; and decision copying and distribution services as required under City ordinance or rule.

2. The City shall provide Galt with a current copy of all City land use plans, policies and ordinances and shall timely provide Galt with amendments thereto passed during the term of this contract.

3. The City shall pay all costs associated with such support.

**3. COMPENSATION / BILLING AND PAYMENT**

A. The Hearing Examiner shall provide services to the City at an hourly rate of One Hundred and Ten dollars per hour (\$110.00) for performance of the duties described herein for actual time spent on the City's work not including travel time to and from the City.

In the event of termination, the City shall pay for all services satisfactorily performed by the Hearing Examiner to the effective date of termination. No payment shall be made for any work completed after the termination date unless by written agreement of the parties.

**B. BILLING AND PAYMENT**

The Hearing Examiner shall be paid by the City for completed work for services rendered under this agreement. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work. Payment shall be on a time and expense basis.

1. Invoices shall be submitted by the Hearing Examiner to the City for payment. The invoice will state the time expended, the hourly rate, a detailed description of the work performed, and the expenses incurred during the preceding month. The City will pay timely submitted and approved invoices received before the 10th of each month within thirty (30) days of receipt.

**4. TERM / DURATION / NOTICE /MODIFICATION**

A. This Agreement shall be effective as of the date first written above and shall continue in effect for a period of \_\_\_\_\_ years until \_\_\_\_\_, 20\_\_\_. After that date the contract shall automatically renew for one year periods of time unless written notice of termination is provided by either party. Either party may terminate this agreement upon sixty (60) days written notice to the other party.

B. NOTICE: Notice given pursuant to this Agreement shall be given in writing to the parties as follows:

CITY OF SULTAN  
Deborah Knight City Administrator  
319 Main Street  
PO Box 1199  
SULTAN, WA 98258

JOHN E. GALT  
927 Grand Avenue  
Everett WA 98201

C. MODIFICATIONS: Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by the parties.

**5. INDEMNIFICATION**

A. The Hearing Examiner is also an appointed City Official under SMC 2.26 and SMC 2.54. The City pursuant to SMC 2.54 shall represent, indemnify, defend and hold harmless any and all challenges files against any action taken and/or any decision rendered by Galt when performing the quasi-judicial duties of Hearing Examiner called for by this contract to the same extent as it would for any other City quasi-judicial body or decision maker under the provisions of SMC 2.54.

B. Galt will defend, indemnify and hold harmless the City, its officers, agents or employees from and against all loss or expense, including but not limited judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its officers, agents or employees for damages because of personal or bodily injury, including death, sustained by any person or persons and on account of damage to property including loss of use thereof due to Galt's negligence[? Delete?] or intentional tortious actions or actions excluded under the provisions of SMC 2.54.030.

C. The provisions of this section shall survive the expiration or termination of this agreement.

**6 NONEXCLUSIVE CONTRACT – NO MINIMUM AMOUNT OF WORK**

This shall be a non-exclusive contract. Nothing herein shall constitute a guarantee to provide a minimum amount of work or a promise to supply work to Galt by the City. The City reserves the right to appoint additional Hearing Examiners or Pro Tem Hearing Examiners as needed and to contract for additional services in the future. Nothing herein shall be interpreted to prohibit such future appointments nor to guarantee renewal of this Agreement, its level of payment, nor the level of cases forwarded to the Hearing Examiner in future years. The City reserves the right to renegotiate any and all provisions of this Agreement for future contract terms.

**7. INDEPENDENT CONTRACTOR.**

The Hearing Examiner is an independent contractor for the performance of services under this Agreement. This agreement shall not constitute or create an employer/employee relationship and Galt shall not acquire as a result of this agreement, unless specifically stated herein, any "employee benefits" which many now exist or hereafter be established for the City for its employees, either by ordinance, practice, contract or otherwise, including but not limited to, annual sick leave, vacation pay, over time, health and accident insurance coverage or retirement benefits, or any other benefit applicable to employees of the City nor shall the City pay or deduct any social security, income tax, or other tax from the payments made to the Hearing Examiner. Galt shall be solely responsible for payment of all taxes and fees, including business license and social security.

The City shall not be obligated to pay industrial insurance for services rendered by the Hearing Examiner.

Any and all employees of Galt, while engaged in the performance of any work or services required by Galt under this agreement, shall be considered employees of Galt only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on

behalf of any said employees while so engaged, and any and all claims made by any third party as a consequence of any negligent act or omission on the part of Galt or his employees while so engaged in any of the work or services provided herein shall be the sole obligation of the Galt. Galt will defend, indemnify and hold harmless the City, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorney's fees or costs incurred by reason or demands because of breach of this Section 7.

The provisions of this section shall survive the expiration or termination of this agreement.

**8. LEGAL RELATIONS.**

The Hearing Examiner shall comply with all federal, state and local laws and ordinances applicable to work to be done under this agreement. This contract shall be interpreted and construed in accordance with the laws of Washington. Venue for any action commenced relating to the interpretation, breach or enforcement of this agreement shall be in Snohomish County Superior Court.

**9. DISPUTES.** The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this contract may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.

**10. WAIVER.**

The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed to be a waiver or relinquishment of said Agreement provision, and the same shall remain in full force and effect.

**11. SEVERABILITY.**

In the event that any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the remaining provisions shall remain in full force and effect.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

CITY OF SULTAN

By \_\_\_\_\_  
Ben Tolson, MAYOR

John E. Galt, Hearing Examiner  
By \_\_\_\_\_  
John E. Galt, Hearing Examiner

Attest:  
Laura J. Koenig, City Clerk  
\_\_\_\_\_

Approved as to form:  
\_\_\_\_\_  
THOM GRAAFSTRA, City Attorney

**RECEIVED**  
AUG 07 2008

BY:.....

**JOHN E. GALT**  
*Quasi-Judicial Hearing Services*  
927 Grand Avenue  
Everett, Washington 98201  
Voice/FAX: (425) 259-3144  
e-mail: jegalt@gte.net

**MEMORANDUM**

To: Sultan City Council  
Mayor Carolyn Eslick

CC: Deborah Knight, City Administrator

From: John E. Galt, Hearing Examiner 

Date: January 28, 2008

Subject: Annual Report for 2007

---

The Sultan Municipal Code does not require an annual report from the Hearing Examiner to the City Council. Nevertheless, I believe that a short summary of the matters which I have heard as your Hearing Examiner during 2007 would be interesting, if not beneficial, to you. I, therefore, present this brief report. The report is divided into two parts: Hearing Activity and Discussion of Issues. I would be pleased to meet with the Council at a time of mutual convenience.

**Hearing Activity**

I conducted 12 land use hearings, involving 19 applications in 10 projects, for the City of Sultan during 2007. Most of the projects heard in 2007 involved consolidated applications. Each case is listed on the attached table in chronological order of hearing.

By comparison, I conducted 10 land use hearings, involving 22 applications, in 2006 and heard only six cases in 2005.

Abbreviations are mostly self-explanatory: Okw/c = approve subject to conditions; Return = return to the applicant for modification (an action allowed by state law in subdivision cases); Dw/oP = deny without prejudice (an equivalent to the "return" action for non-subdivision cases).

**Discussion of Issues**

The new Council may not be aware of the difficulties we have experienced over the last couple of years regarding concurrency and PUD locational criteria. At the risk of boring "veteran" Council members, I am repeating here [with updates in brackets] what I said in last year's Annual Report about code difficulties.

"I remain convinced that a difference exists between the purpose of Chapter 16.108 SMC, Concurrency Management System, and the purpose of Chapter 16.112 SMC, Development Impact Fees. As presently enacted, I believe the former sets a Level of Service 'floor' which if not met bars development until guarantees are in place that it will be met, while the latter is a 'pay-as-you-go' Growth Management Act impact fee ordinance. Citizens first began challenging compliance with Chapter 16.108 SMC with the first case heard this year; those challenges continued with every case heard during the year.

"Given the problems experienced during 2006 [and 2007] with interpretation and implementation of Chapter 16.108 SMC, I urge the Council to legislatively clarify its intent and application at the earliest opportunity: Statutory vesting provisions in state law require subdivision applications to be evaluated against the regulations in effect when a complete application is filed. The longer this ordinance goes without clarification, the more applications will be caught up in its provisions.

"Trouble interpreting and implementing several PUD locational criteria characterized all of 2006's PUD applications [and some in 2007 as well]. The stumbling blocks were the locational criteria in SMC 16.10.110(B)(2), especially subsections (2)(c) and (2)(d) relating to connection to an off-site pedestrian system and transit facilitation. My Recommendations throughout the year dealt with those provisions in depth; I will not repeat those analyses here. I would only point out that, as written, the criteria evidence a legislative intent to limit or restrict the location of PUDs within Sultan to only places meeting the locational criteria. Yet, Staff's interpretation, to slightly simplify, is that PUDs can be located anywhere in the City. The adopted code language is inconsistent with that interpretation.

"I respectfully ask that the code be amended to make your intent in these matters clear.

"On a different matter, I bring to your attention the fact that in the land division regulations chapter of the Unified Development Code, Chapter 16.28 SMC, the only 'Minimum requirements and improvement standards' are found within the short subdivision portion of the chapter (at SMC 16.28.230) and the only modification procedures are likewise found within the short subdivision portion of the chapter (SMC 16.28.240). The subdivision portion of the chapter contains no parallel standards or procedures.

"The provisions of SMC 16.28.230, however, apparently apply to all types of land divisions, not just short subdivisions: The right-of-way width requirements include an entry for '5 or more dwelling units' – short subdivisions in Sultan are limited by ordinance to four or fewer lots. [SMC 16.28.020] It makes no sense that the City would set development standards for small land divisions (short subdivisions) without setting development standards for large land divisions (subdivisions).

"And it likewise makes no sense to establish a procedure, complete with detailed review criteria, by which an applicant for a short subdivision may seek relief from development standards because of 'extraordinary conditions' without having an equivalent procedure for subdivisions.

"I believe that this is a result of an organizational 'glitch' in Chapter 16.28 SMC. I urge you to review this structural problem and clarify the City's intent.

"Finally, I ask that you legislatively clarify and 'clean up' code provisions relating to the nature and effect of the Examiner's actions. The table in SMC 16.120.080 lists decision making authority for a wide range of land use permits. For each action in which the Hearing Examiner is assigned the responsibility to conduct the public hearing, an 'X' appears in the 'Council Action' column. I (and I believe Staff and the [former] City Attorney) have always understood that 'X' to mean that the Council reserved to itself the final decision making authority and, therefore, that my action was to take the form of a Recommendation to the Council.

"However, Chapter 2.26 SMC, Hearing Examiner, consistently uses the word 'decision' when referring to the Examiner's action – it never mentions a 'recommendation.' It also provides guidance for filing an appeal from the Examiner's decision to the Council. The opening phrase of SMC 2.26.140(B)(1) ('Where the examiner's decision is final and conclusive with right of appeal to the council') seems to imply that some Examiner actions are other than final with right of appeal to the Council. But the rest of the chapter does not follow up on that notion.

"The provisions in Chapter 2.26 SMC were enacted in 1990 (Ordinance No. 550) whereas the table in SMC 16.120.050 was last amended in 2001 (Ordinance No. 770-01). Every code amendment ordinance adopted by Sultan which I have seen contains a generic repealer clause: Any provisions elsewhere within the SMC in conflict with the new amendment are automatically repealed. If Ordinance No. 770-01 contained such a clause, it would have automatically repealed all other provisions regarding the effect of an Examiner action. But since the 'X's in the table do not specifically indicate what they stand for, the ultimate meaning and intent of the code is unclear.

"I respectfully ask that the Council legislatively clarify the nature of the Examiner's action for each type of case assigned under code to the Examiner. I have no interest, preference, or comment regarding whether all or some Examiner actions should be Recommendations to the Council, final Decisions with right of appeal to the Council, or final Decisions with right of appeal to Superior Court. (State law controls appeals from City decisions regarding Shoreline Management Act permits and also limits the number of open record hearings and appeals which may be held.) Those are policy decisions within the Council's purview."

I hope that the current Council will be able to consider clarifying these aspects of the City Code this year.