

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: C-6
DATE: November 12, 2009
SUBJECT: Renewal of Hearing Examiner Contract with Mr. John Galt
CONTACT PERSON: Robert Martin, Community Development Director

ISSUE:

First automatic Annual Renewal of existing two-year contract with John Galt for Hearing Examiner Services

STAFF RECOMMENDATION:

Staff recommends that the Council, by Motion, automatically renew the City's Contract with John Galt as the City's Hearing Examiner for one-year under the existing provisions and rate of compensation provided for by the existing Contract as executed November 8, 2007.

BACKGROUND:

On November 8, 2007, the City contracted with John Galt to provide Hearing Examiner Services for the City (**Attachment A**). The Hearing Examiner system is established by SMC Chapter 2.26 to hear and decide Land Use and related Administrative Procedures as provided by RCW 58.17.330.

The Council has recently expanded the role of the Hearing Examiner to include making decisions on all Quasi-Judicial Land Use Applications.

Section 4 of the existing Contract provides that:

"... The agreement shall automatically renew for one (1) year period 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."

Staff finds that the City has been well served by Mr. Galt and that the automatic renewal provision should be invoked.

Mr. Galt has agreed to automatic renewal including the existing rate of compensation of \$110.00/per hour as provided in Section 3 of the existing Contract.

ALTERNATIVES:

1. Move to approve renewal of the existing Contract for one-year, or
2. Do not approve renewal of the existing Contract and direct Staff to renegotiate the contract with Mr. Galt and give direction as to intent of renegotiation, or
3. Direct Staff to seek other sources of Hearing Examiner Services and return to Council with recommendations.

RECOMMENDATION:

Staff recommends that the Council, by Motion, automatically renew the City's Contract with John Galt as the City's Hearing Examiner for one-year under the existing provisions and rate of compensation provided for by the existing contract as executed November 8, 2007.

ATTACHMENTS

Attachment A: Existing Hearing Examiner Contract

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

THIS AGREEMENT, made and entered into this 8th day of November 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, Sultan Municipal Code 2.26.030 states:

The hearing examiner shall be appointed by the mayor from a list of qualified persons approved by the council. The compensation of the hearing examiner shall be approved by the council as with other professional and consultant provisions.

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, the mayor has appointed Galt as the hearing examiner for the City of Sultan and the compensation for the services as appointed hearing examiner for the city of sultan shall be approved by the council; 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 he 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 this agreement and to provide for the compensation of the appointed Hearing Examiner for those services. 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. **Assignments 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. Galt shall provide services as the appointed Hearing Examiner 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.

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 two (2)- years until November 8, 2009. After that date the agreement shall automatically renew for one (1)-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.

A3

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
Evreth 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 filed 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 intentional tortuous 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 AGREEMENT - NO MINIMUM AMOUNT OF WORK

This shall be a non-exclusive agreement. 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 enter into agreements 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 agreement terms.

7. APPOINTED OFFICIAL.

The Hearing Examiner is an appointed official under SMC 2.26.030 for the performance of services and compensation 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 Galt..

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 agreement 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 agreement 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.

A-5

11. SEVERABILITY.

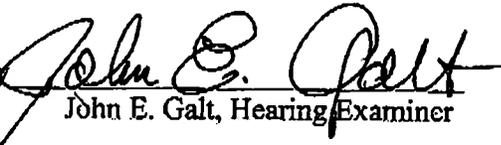
In the event that any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the remaining provisions shall remain in full force and effect.

DATED this 8th day of NOVEMBER, 2007.

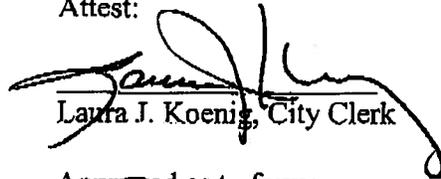
CITY OF SULTAN

By 
Ben Tolson, MAYOR

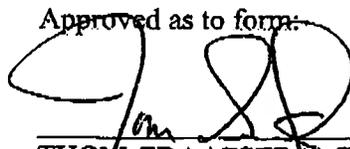
John E. Galt, Hearing Examiner

By 
John E. Galt, Hearing Examiner

Attest:


Laura J. Koenig, City Clerk

Approved as to form:


THOM GRAAFSTRA, City Attorney

A-6