

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of County Commissioners

FROM: Mark McCauley, County Administrator

DATE: August 28, 2023

SUBJECT: EXERCISE of OPTION re: Contract for Hearing Examiner Services

STATEMENT OF ISSUE:

The Contract for Hearing Examiner Services with Gary N. McLean, entered into on December 13, 2021, expires on December 31, 2022. SECTION 1. EFFECTIVE DATE OF CONTRACT states the following: "This contract shall have a four (4) year option period. The County may exercise its option years at its sole discretion." The county has exercised one option year for 2023 and needs to exercise its second option year for 2024.

ANALYSIS:

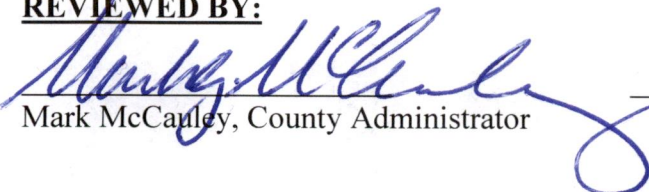
Staff recommends that the Board of County Commissioners approve the exercise of the second of its four option years. Mr. McLean has been doing a fine job as Hearing Examiner and staff would like him to continue serving in that capacity through December 31, 2024.

FISCAL IMPACT:

The contract has a not to exceed amount of \$25,000 which is paid from the General Fund, Non-departmental. The amount was increased to \$40,000 in both 2022 and 2023. We expect the contract amount to be similarly increased for 2024 depending on the number and complexity of hearings conducted.

RECOMMENDATION: That the Board approve the exercise of the second of four option years for 2024.

REVIEWED BY:


Mark McCauley, County Administrator

8/25/23
Date

U. DED 112.13.21
M.H.
Orig. Gary McLean

Ref: 2008.

CONTRACT FOR HEARING EXAMINER SERVICES

This Contract for Hearing Examiner Services (Contract) is entered into by Jefferson County, a political subdivision of the State of Washington, having its principal offices at 1820 Jefferson Street Port Townsend, Washington, 98368 (County) and Gary N. McLean having his principal offices at 27455 8th Ave. South, Des Moines, WA 98198 (Contractor).

SECTION 1. EFFECTIVE DATE OF CONTRACT

This Contract is effective from January 1, 2021 until December 31, 2022. This Contract shall have a four (4) year option period. The County may exercise its option years at its sole discretion. This Contract shall not exceed five (5) years including the base and option periods. The County shall exercise its option periods with written notice to the Contractor.

In no event will this Contract be effective beyond December 31, 2026. This Contract will not become effective until it is approved and executed by the Jefferson County Board of Commissioners.

SECTION 2. SERVICES TO BE PROVIDED

- 2.1 A description of the services to be performed by the Contractor is set forth in Exhibit A: Description of Services, which is attached to this Contract and incorporated by this reference.
- 2.2 The Contractor agrees to provide its own labor and materials. Unless otherwise provided for in this Contract no material or labor will be furnished by the County.
- 2.3 The Contractor shall perform the work specified in this Contract according to standard industry practices and in conformity with state law.
- 2.4 The Contractor shall complete its work in a timely manner and in accordance with the schedule agreed to by the parties.
- 2.5 The Contractor shall confer with the County from time to time during the progress of the work. The Contractor shall prepare and present status reports and other information that may be pertinent and necessary or as may be requested by the County.

SECTION 3. CONTRACT REPRESENTATIVES

- 3.1 The County and the Contractor shall each have a contract representative. A party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

County's Contract Supervisor
County Administrator
1820 Jefferson Street
Port Townsend, WA 98368

Contractor's Contract Representative

Gary N. McLean
27455 8th Ave. South
Des Moines, WA 98198

SECTION 4. COMPENSATION

- 4.1 A description of the compensation to be paid to the Contractor is set forth in Exhibit B: Compensation, which is attached to this Contract and incorporated by this reference.
- 4.2 Contractor shall submit an invoice to the County Administrator once a month for payment of work actually completed to date. Subject to the other provisions of this Contract, then County generally will pay such an invoice within 30 days of receiving it.
- 4.3 The Contractor will be paid only for work expressly authorized in this Contract.
- 4.4 The Contractor will not be entitled to payment for any services that were performed prior to the effective date of this Contract or after its termination, unless a provision of this Contract expressly provides otherwise.
- 4.5 If the Contractor fails to perform any substantial obligation and the failure has not been cured within 10 days following notice from the County, the County may, in its sole discretion and upon written notice to the Contractor, withhold all monies due the Contractor, without penalty, until such failure to perform is cured.

SECTION 5. AMENDMENTS AND CHANGES IN WORK

- 5.1 In the event of any errors or omissions by the Contractor in the performance of any work required under the Contract, the Contractor shall make all necessary corrections without additional compensation. All work submitted by the Contractor shall be certified by the Contractor and checked by this Contractor for errors and omissions. The Contractor shall continue to be responsible for the accuracy of work even after the work is accepted by the County.
- 5.2 In order to be effective all amendments or modifications must be in writing, be signed by both parties, and be attached to this Contract. Work under an amendment or modification may not commence until the amendment or modification has been approved by the County and has become effective.

SECTION 6. HOLD HARMLESS AND INDEMNIFICATION

- 6.1 The Contractor shall hold harmless, indemnify and defend the County, its officers, officials, employees, agents and volunteers (and their marital communities), from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's negligent acts, errors or omissions in the performance of this Contract.

- 6.2 The County shall hold harmless, indemnify and defend the Contractor, its officers, officials, employees, agents and volunteers (and their marital communities), from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the County's negligent acts, errors or omissions in the performance of this Contract.
- 6.3 The Contractor does not assume liability or responsibility for, or in any way release the County from liability or responsibility that arises, in whole or in part, from the existence or effect of the County's ordinances, resolutions, code, policies, plans, rules or regulations in any form or fashion. If any cause, claim or action of any kind is commenced in which the enforceability and/or validity of any County ordinance, resolution, code, policy, plan, rule or regulation of any sort, including its constitutionality, is at issue, the County shall defend the Contractor at its sole cost and expense, and if judgment is entered, or damages are awarded against the Contractor, or the Contractor and County jointly, the County shall promptly satisfy the judgment.
- 6.4 Any defense provided to the Contractor pursuant to Section 6.2 or Section 6.3 shall be by counsel appointed by the Jefferson County Prosecuting Attorney (Appointed Counsel), who shall also represent the County in any such representation. Joint representation offers several advantages such as presenting a united front against any claims and minimizing the opportunity to pit one jointly represented person against another. Joint representation often allows for improved coordination of the defense. Joint representation also leads to cost and time efficiencies and extra value related to information exchange and strategy development. Appointed Counsel may be a regular or special deputy, and shall retain the right to control not only the strategic decisions relating to the conduct of the case, but also all aspects of negotiation or settlement of the matter. The Contractor agrees to cooperate in the defense of the action and comply with the requirements in JCC 2.05.060, which is incorporated into this Contract by reference. If the Contractor desires at any time to have the Assigned Counsel to take a different approach on any issues to which Assigned Counsel does not agree, the Contractor shall retain separate counsel at his own expense, after providing written notice to Assigned Counsel. If the Contractor decides to have separate counsel represent him, then the County shall have no further obligation to defend the Contractor or to indemnify the Contractor for any judgment for damages should one be entered against the Contractor. The Contractor understands that appointed counsel defends him as part of its representation and defense of the County. Any information provided by the Contractor will, in the ordinary course, be given to the County and may be used in defense of the County and any other jointly represented person. This information may be used by the County in any matter, including matters where the County and the Contractor may be adverse. The Contractor understands that confidentiality extended to communication between attorney and client does not fully apply for jointly represented persons. Appointed Counsel cannot have confidential communication affecting the defense of the matter that are kept secret from any other jointly represented person or from decision makers within the department or the county, such as the board of county commissioners.

- 6.5 With regard to any claim against the County, its officers, officials, employees and agents by any employee of the Contractor, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. It is clearly agreed and understood by the parties to this Contract that the Contractor expressly waives any immunity the Contractor might have had under such laws. By executing this Contract, the Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the Contractor makes with any subcontractor or agent performing work under this Contract.
- 6.6 The Contractor's obligations under these provisions include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the Contractor, the Contractor's employees, agents or subcontractors.
- 6.7 Should a court of competent jurisdiction determine that this Contract 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 County, its officers, officials, employees, agents and volunteers, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor's negligence.
- 6.8 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.
- 6.9 The provisions of this section shall survive the expiration or termination of this Contract.

SECTION 7. INSURANCE

- 7.1 **Workers' Compensation and Employer Liability.** The Contractor shall maintain workers' compensation insurance as required by Title 51, Revised Code of Washington.
- 7.2 **Automobile Liability.** The Contractor shall maintain automobile liability insurance as follows:

The Contractor shall maintain automobile liability insurance or equivalent form with a limit of not less than \$250,000 each accident combined bodily injury and property damage. The aggregate limit shall be at least \$500,000. If a personal lines automobile liability policy is used to meet this requirement, it must include a business rider and must cover each vehicle to be used in the performance of this Contract and the certificates of insurance must evidence that these conditions have been met. If the Contractor shall use non-owned vehicles in performance of this Contract, the coverage shall include owned, hired, and non-owned automobiles.

7.3 Miscellaneous Insurance Provisions.

- A. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the County, its officers, officials, employees and agents.
- B. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure, nor are they limitations on indemnification.
- C. The Contractor shall maintain all required policies in force from the time services commence until services are completed.
- D. Failure of the Contractor to take out or maintain any required insurance shall not relieve the Contractor from any liability under this Contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification of the County.
- E. Any coverage for third party liability claims provided to the County by a "Risk Pool" created pursuant to Ch. 48.62 RCW shall be non-contributory with respect to any insurance policy the Contractor shall provide to comply with this Contract. Any insurance policy referenced in Section 7 shall not require contributions by a Risk Pool" created pursuant to Ch. 48.62 RCW with respect to any third-party liability claims.
- F. The Contractor shall furnish the County with properly executed certificates of insurance that, at a minimum, shall include: The limits of coverage; the project name, and agreement number to which it applies; the certificate holder as Jefferson County, Washington and its elected officials, officers, and employees with the address of Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368.

7.6 Verification of Coverage and Acceptability of Insurers.

- A. The Contractor shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best company ratings of no less than A-VII, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or reinsurers licensed in the State of Washington.
- B. Written notice of cancellation or change shall be made to the County at the following address:

Jefferson County Administrator
PO Box 1220
Port Townsend, WA 98368
- C. The Contractor or its broker shall provide a copy of all insurance policies specified in this Contract upon request of the Jefferson County Risk Manager.

SECTION 8. TERMINATION

- 8.1 The County may terminate this Contract in whole or in part whenever the County determines, in its sole discretion that such termination is in the best interests of the County. The County may terminate this Contract upon giving the Contractor 10-days' written notice. In that event the County will pay the Contractor for all costs incurred by the Contractor in performing the Contract up to the date of such notice, subject to the other provisions of this Contract.
- 8.2 If funding for the underlying project or matter is withdrawn, reduced or limited in any way after this Contract is signed or becomes effective, the County may immediately terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this provision shall be effective upon the date specified in the written notice of termination sent by County to the Contractor. No costs incurred after the effective date of the termination will be paid.
- 8.3 If the Contractor breaches any of its obligations under this Contract, and fails to cure the breach within 10 days of written notice to do so by the County, the County may terminate this Contract. In that event, the County will pay the Contractor only for the costs of services accepted by the County. Upon such termination, the County, at its discretion, may obtain performance of the work elsewhere, and the Contractor will bear all costs and expenses incurred by the County in completing the work and all damages sustained by the County by reason of the Contractor's breach.

SECTION 9. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

- 9.1 The Contractor shall perform under the Contract using only its bona fide employees or agents, and the obligations and duties of the Contractor under this Contract shall not be assigned, delegated or subcontracted to any other person or firm without the prior express written consent of the County.
- 9.2 The Contractor warrants that it has not paid, nor has it agreed to pay, any company, person, partnership or firm, other than a bona fide employee working exclusively for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract.

SECTION 10. INDEPENDENT CONTRACTOR

- 10.1 The Contractor's services shall be furnished by the Contractor as an independent contractor and not as an agent, an employee or a servant of the County. The Contractor specifically has the right to direct and control Contractor's own activities in providing the agreed services in accordance with the specifications set out in this Contract. The Contractor shall perform the contracted work. Any designee shall have prior County approval to substitute for the contracted representative.
- 10.2 The Contractor acknowledges that the entire compensation for this Contract is set forth in the compensation provisions of this Contract and the Contractor is not entitled to any County benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay;

medical, dental or other insurance benefits; fringe benefits; or any other rights or privileges afforded to Jefferson County employees.

- 10.3 The Contractor shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents and representatives. No subcontractor, employee, agent or representative of the Contractor will be or be deemed to be, or act or purport to act, as an employee, agent or representative of the County.

SECTION 11. NO HARASSMENT OR DISCRIMINATION

Any form of harassment, discrimination, or improper fraternization with any County employee is strictly prohibited. The Contractor, its assignees, delegates or subcontractors shall not discriminate against any person in performance of any of its obligations under this Contract on the basis of race, color, creed, religion, national origin, age, sex, marital status, veteran status or the presence of any disability.

SECTION 12. OWNERSHIP OF MATERIALS/WORKS PRODUCED

- 12.1 All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the County. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights.
- 12.2 An electronic copy of all word processing documents shall be submitted to the County upon request or at the end of the job using the word processing program and version specified by the County.

SECTION 13. PATENT/COPYRIGHT INFRINGEMENT

- 13.1 The Contractor shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any claimed action, cause or demand brought against the County, where such action is based on the claim that information supplied by the Contractor or subcontractor infringes any patent or copyright. The Contractor will be notified promptly in writing by the County of any notice of such claim.

SECTION 14. DISPUTES

- 14.1 Differences, disputes and disagreements between the Contractor and the County arising under or out of this Contract shall be brought to the attention of the County at the earliest possible time so that the matter may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance or compensation due the Contractor shall be decided by the County Administrator. All rulings, orders, instructions and decisions of the County Administrator shall be the final administrative remedy available under this Contract.

SECTION 15. CONFIDENTIALITY

- 15.1 The Contractor, its employees, subcontractors and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in

performance of this Contract, except upon the prior express written consent of the County or upon an order entered by a court of competent jurisdiction. The Contractor shall promptly give the County Administrator written notice of any judicial proceeding seeking disclosure of such information, as well as any contacts by citizens, proponents or interested parties as to matters before the Contractor.

SECTION 16. CHOICE OF LAW, JURISDICTION AND VENUE

- 16.1 It is understood and agreed that this Contract is entered into in the State of Washington. This Contract shall be governed by and construed in accordance with the laws of the United States, the State of Washington and the County of Jefferson, as if applied to transactions entered into and to be performed wholly within Jefferson County, Washington between Jefferson County residents.
- 16.2 No party shall argue or assert that any state law other than Washington law applies to the governance or construction of this Contract.
- 16.3 Should either party bring any legal action, each party in such action shall bear the cost of its own attorney's fees and court costs.
- 16.4 The venue for any legal action shall be solely in the appropriate state court in Jefferson County, Washington, subject to the venue provisions for actions against counties in RCW 36.01.050.

SECTION 17. OTHER TERMS

- 17.1 **No Waiver.** The parties agree that the excuse or forgiveness of performance, or waiver of any provisions of this Contract, does not constitute a waiver of such provision or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time.
- 17.2 **Tax Payments.** The Contractor shall pay all applicable federal, state and local taxes, fees (including licensing fees), and other amounts.
- 17.3 **Personnel Removal.** The Contractor agrees to remove immediately any of its subcontractors, employees, agents or representatives from assignment to perform services under this Contract upon receipt of a written request to do so from the County Administrator.
- 17.4 **Legal Compliance.** The Contractor and its subcontractors, employees, agents and representatives shall comply with all applicable federal, state and local laws, rules and regulations in their performance under this Contract. The Contractor shall be entitled to seek legal advice from the Jefferson County Prosecuting Attorney or his or her designee to the extent that the Prosecuting Attorney or his or her designee can provide such legal advice in a manner consistent with the applicable rules governing a lawyer's conduct.
- 17.5 **Records Inspection and Retention.** The County may, at reasonable times, inspect the books and records of this Contractor relating to the performance of this Contract. The

Contractor shall retain for audit purposes all Contract-related records for at least six years after termination of this Contract.

- 17.6 **Successors and Assigns.** The County, to the extent permitted by law, and the Contractor each bind themselves, their partners, successors, executors, administrators and assigns to the other party to this Contract and to the partners, successors, administrators and assigns of such other party in respect to all covenants to this Contract.
- 17.7 **Severability.** Provided it does not result in a material change in the terms of this Contract, if any provision of this Contract or the application of this Contract to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Contract and the application this Contract shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 17.8 **Entire Agreement.** This Contract memorializes the entire agreement of the parties and all parts of this Contract are contained herein.
- a. No representation or promise not expressly contained in this Contract has been made.
 - b. No party is entering into this Contract based on any inducement, promise or representation, expressed or implied, which is not expressly contained in this Contract.
 - c. This Contract supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral, within the scope of this Contract.
- 17.9 **Price Increases for Services.** Either party to this Contract may request a change in the price of services if there is a significant change in the level or services required for this Contract. Changes in contractual provisions of services to be rendered under this Contract may be only in writing and shall be approved mutually by an authorized agent of the Contractor and by the County.
- 17.10 **No Third-party Beneficiaries.** The parties do not intend, and nothing in this Contract shall be construed to mean, that any provision in this Contract is for the benefit of any person or entity who is not a party.
- 17.11 **Modification of this Contract.** This Contract may be amended or supplemented only by a writing that is signed by duly authorized representatives of all the parties.
- 17.12 **Signature in Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Contract at different times and places by the parties shall not affect the validity of this Contract, so long as all the parties execute a counterpart of this Contract.
- 17.13 **Facsimile and Electronic Signatures.** The parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.

- 17.14 **Arms-Length Negotiations.** The parties agree that this Contract has been negotiated at arms-length, with the assistance and advice of competent, independent legal counsel.
- 17.15 **Maintenance of Records.** Each party shall maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of this Contract. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Contract shall be retained for six years after expiration of this Contract. The Office of the State Auditor, federal auditors, the Jefferson County Auditor, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. Records and other documents, in any medium, furnished by one party to this Contract to the other party, shall remain the property of the furnishing party, unless otherwise agreed.
- 17.16 **Public Records Act.** Notwithstanding any provisions of this Contract to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, Chapter 42.56 RCW (as may be amended), the Contractor agrees to maintain all records constituting public records and to produce or assist the County in producing such records, within the time frames and parameters set forth in state law. The Contractor also agrees that upon receipt of any written public record request, the Contractor shall, within two business days, notify the County by providing a copy of the request per the notice provisions of this Contract. This Contract, once executed, will be a "public record" subject to production to a third party if it is requested pursuant to the Washington Public Records Act, Chapter 42.56 RCW (as may be amended).
- 17.17 **Notices.** Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in this Contract representative's provision of this Contract. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing, or immediately if personally served. For service by facsimile, service shall be effective at the beginning of the next working day.
- 17.18 **County Drug and Alcohol Policy.** While performing services, the use of illegal drugs, alcohol, or controlled substances on the County property or premises is strictly prohibited. The Contractor's employees shall not perform services while under the influence of drugs or alcohol, and if discovered, may be reported to the appropriate law enforcement agency.
- 17.19 **County Tobacco Policy.** The use of tobacco of any kind on property or premises of the County shall be in compliance with the County policies.
- 17.20 **Representations.** The parties represent and warrant that: (a) Each person signing this Contract is fully authorized to enter into this Contract on behalf of the party for whom signature is being made; (b) Each party that is a corporate entity is duly organized and

validly existing in good standing under the laws of one of the states of the United States of America; (c) The making and performance of this Contract will not violate any provision of law or of any party's articles of incorporation, charter, or by-laws; (d) Each corporate party has taken all necessary corporate and internal legal actions to duly approve the making and performance of this Contract and that no further corporate or other internal approval is necessary; and, (e) Each party has read this Contract in its entirety and know the contents of this Contract, that the terms of this Contract are contractual and not merely recitals, and that they have signed this Contract, having obtained the advice of legal counsel.

(SIGNATURES FOLLOW ON NEXT PAGE)

IN WITNESS WHEREOF:

Jefferson County and the Contractor have signed this Contract on the date noted:

JEFFERSON COUNTY WASHINGTON

Board of County Commissioners
Jefferson County, Washington

By: [Signature] 12/13/21
Kate Dean, Chair Date

By: [Signature] 12/13/21
Greg Brotherton, Commissioner Date

By: [Signature] 12/13/21
Heidi Eisenhour, Commissioner Date

SEAL:

ATTEST:

Carolyn Galloway 12/13/21
Carolyn Galloway Date
Clerk of the Board

Approved as to form only:

[Signature]
December 9, 2021
Philip C. Hunsucker Date
Chief Civil Deputy Prosecuting Attorney

CONTRACTOR

Gary N. McLean

By: [Signature]
Gary N. McLean, Attorney at Law

Date: Dec 9, 2021

EXHIBIT A: DESCRIPTION OF SERVICES

The Examiner conducts administrative and quasi-judicial hearings on a variety of matters listed in Jefferson County Code (JCC) 2.30.080. This includes land use hearings and non-land use hearings. Pursuant to JCC 2.30.020, the Hearing Examiner Office (Office) is separate and distinct from any other county officer or department and the Office is under the administrative supervision of the Examiner. The Office operates pursuant to the Hearing Examiner Rules of Procedure. The Examiner is expected to hear all matters as delegated to the position through the Jefferson County Code or other applicable laws or regulations, unless he or she identifies a conflict of interest that requires recusal.

Applicants may propose a pro-tempore Hearing Examiner. Neither the Hearing Examiner or any pro-tempore Hearing Examiner will be employees of Jefferson County.

A. Duties Related to Hearings and Decisions

All hearings must be consistent with the requirements of due process and the appearance of fairness doctrine, in addition to the requirements of Jefferson County Code. The Hearing Examiner shall 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. Hearing cases as assigned, addressing all procedural and substantive issues as required, and preparing clear, defensible written decisions and recommendations;
2. Pursuant to Chapter 2.30 JCC and the Hearing Examiner Rules of Procedure, the Hearing Examiner is required to render decisions or recommendations within 14 days following the hearing, unless an extension is consented to by the parties. A copy of the decision must be sent to the County in an electronic format and transmitted via email; and
3. It may be necessary for the Hearing Examiner to visit proposed development sites prior to rendering a decision or recommendation. Mileage is paid on a reimbursement basis at the normal County rate.

Applicants may propose a pro-tempore Hearing Examiner. Neither the Hearing Examiner or any pro-tempore Hearing Examiner will be employees of Jefferson County.

Regular public hearings typically are conducted virtually on the second and fourth Tuesdays of each month between the hours of 9 a.m. and 5 p.m., unless a different schedule is necessary due to unique circumstances. In-person hearings only shall be conducted if the Hearing Examiner determines it is necessary upon a motion of the parties. The length of hearings is dependent upon the nature of the hearing. Additional hearings may be scheduled as necessary.

The Examiner shall comply with all sections of Chapter 2.30 JCC, including rendering a written decision within 14 days of the close of the record on the matter. Copies of the decisions shall be sent to the County in electronic format such as portable digital file (pdf).

B. Administrative Duties

In addition to the conducting of hearings and issuance of decisions, the duties of the Hearing Examiner include the following:

1. Administrative responsibility over any Pro Tempore Hearing Examiner (if any) and the Office of the Hearing Examiner;
2. Production of a written annual report, which shall contain a summary of decisions rendered and recommendations for improving the Hearing Examiner system;
3. Initiate, recommend and assist with revisions to the Jefferson County Hearing Examiner Rules of Procedure; and,
4. Providing annual recommendations pertaining to improvements in the land use code and policy, and other parts of the Jefferson County Code.

The duties of any Pro Tempore Hearing Examiner shall be identical to the Hearing Examiner, with the exception that a Pro Tempore Hearing Examiner is not required to complete any of the administrative duties listed above.

C. Technological Requirements

1. The Department utilizes a paperless, online permitting process;
2. 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 email by means of pdf or Microsoft Word documents;
3. 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 shall be provided to the Hearing Examiner from the department;
4. Most hearings will be held virtually. The Hearing Examiner must have adequate technology and equipment to ensure successful audio and video connection capabilities; and
5. The County implements best practices to enable participation by older adults and persons with disabilities as evidenced by use of a virtual platform that enables closed caption for those with difficulty hearing.

D. Insurance Requirements

Prior to beginning work, the Hearing Examiner and Pro Tempore Hearing Examiner shall be required to procure and maintain at their expense, for the duration of this Contract, comprehensive automobile liability insurance at statutorily required limits and worker's compensation coverage if required by the State of Washington. The insurance must be placed with insurers with a minimum Best's rating of A-. Evidence of insurance must be presented to the County Administrator's Office prior to execution of this Contract.

E. Conflicts Checks

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

EXHIBIT B: COMPENSATION

Contractor will be paid on a monthly basis for services rendered at the hourly rate of \$175. Annual contract amount is not to exceed \$25,000 per year for the period of January 1, 2022 to December 31, 2026. This annual amount may be exceeded with prior written approval of the County Administrator.

Contractor shall submit an invoice to the County Administrator once a month for payment of work actually completed to date. Subject to the other provisions of this Contract, then County generally will pay such an invoice within 30 days of receiving it.

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

TO: Board of County Commissioners

FROM: Brent Butler, DCD Director
Philip C. Hunsucker, Chief Civil Deputy

DATE: December 13, 2021

SUBJECT: Contract for Hearing Examiner Services

STATEMENT OF ISSUE: The Board of County Commissioners ("BoCC") is requested to consider approving a contract for hearing examiner services with Gary McLean, Attorney at Law.

ANALYSIS: Jefferson County Hearing Examiner Stephen Causseaux informed the county last summer that he would be retiring by the end of 2021. Accordingly, the Department of Community Development (DCD), with help from the Prosecuting Attorney's Office (PAO), developed a Request For Proposals For Hearing Examiner Services (RFP) and disseminated it to a number of different list servs developed for the administrative law section, and environmental and land use law section of the Washington State Bar Association, and the list serv developed for the Hearing Examiner's Association of Washington. We received only one response to the RFP. Following feedback from a recipient, we revised the RFP and re-advertised it. We received three responses by the deadline.

The county assembled a panel to interview all three responders and conducted interviews on December 7th and 8th. The panel consisted of Commissioner Greg Brotherton, Interim County Administrator Mark McCauley, DCD Director Brent Butler, and Civil Deputy Prosecuting Attorney Barbara Ehrlichman. The panel considered extensive materials provided by the responders, including sample decisions.

The panel is unanimous in recommending that the Board of County Commissioners hire Gary McLean as our next hearing examiner. Gary has extensive land use and municipal experience, and has served as a hearing examiner exclusively for the past twelve years. He serves numerous jurisdictions, including several other rural counties.

The contract term is initially for one year, with an option to extend another four years. Time is of the essence, as we have one case already waiting for hearing, and several more that will be ready to schedule with the Hearing Examiner in the near future.

FISCAL IMPACT: This contract has a not-to-exceed amount of \$25,000 and an hourly rate of \$175.

RECOMMENDATION: Approve the contract for Hearing Examiner Services, attached, on the consent agenda on Monday, December 13, 2021.

REVIEWED BY:



Mark McCauley, Interim County Administrator

Date 12/19/21

CONTRACT REVIEW FORM

(INSTRUCTIONS ARE ON THE NEXT PAGE)

Clear Form

CONTRACT WITH: Gary McLean, Attorney at Law

Contract No:

Contract For: Hearing Examiner Services

Term: 1 year, possible 4 one-year extensions

COUNTY DEPARTMENT: Department of Community Development

Contact Person: Brent Butler

Contact Phone: Ex. 493

Contact email: bbutler@co.jefferson.wa.us

AMOUNT: Not to exceed \$25,000

Revenue: N/A

Expenditure: NTE \$25,000

Matching Funds Required: N/A

Sources(s) of Matching Funds: N/A

Fund #: 001-270

Munis Org/Obj: ND 34195/341056

PROCESS:

- | | |
|-------------------------------------|-------------------------|
| ☐ | Exempt from Bid Process |
| ☐ | Cooperative Purchase |
| ☐ | Competitive Sealed Bid |
| ☐ | Small Works Roster |
| ☐ | Vendor List Bid |
| ☒ | RFP or RFQ |
| ☐ | Other: _____ |

APPROVAL STEPS:

STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH JCC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: ☐ N/A: ☒

Signature

December 8, 2021

Date

STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.

CERTIFIED: ☐ N/A: ☒

Signature

December 8, 2021

Date

STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):

Electronically approved by Risk Management on 12/9/2021.

STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):

Electronically approved as to form by PAO on 12/9/2021.
Per RFP, slightly revised contract.

STEP 5: DEPARTMENT MAKES REVISIONS & RESUBMITS TO RISK MANAGEMENT AND PROSECUTING ATTORNEY(IF REQUIRED).

STEP 6: CONTRACTOR SIGNS

STEP 7: SUBMIT TO BOCC FOR APPROVAL

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of County Commissioners

FROM: Mark McCauley, County Administrator

DATE: December 19, 2022

SUBJECT: EXERCISE of OPTION re: Contract for Hearing Examiner Services

STATEMENT OF ISSUE:

The Contract for Hearing Examiner Services with Gary N. McLean, entered into on December 13, 2021, expires on December 31, 2022. SECTION 1. EFFECTIVE DATE OF CONTRACT states the following: "This contract shall have a four (4) year option period. The County may exercise its option years at its sole discretion."

ANALYSIS:

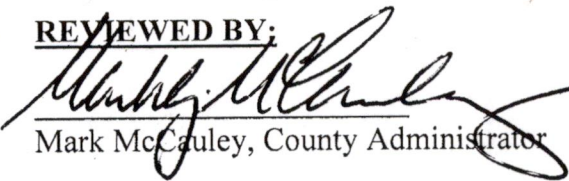
Staff recommends that the Board of County Commissioners approve the exercise of the first of its four option years. Mr. McLean has been doing a fine job as Hearing Examiner and staff would like him to continue serving in that capacity through December 31, 2023.

FISCAL IMPACT:

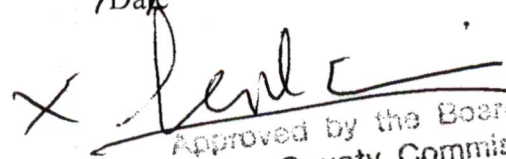
The contract has a not to exceed amount of \$25,000 which is paid from the General Fund, Non-departmental.

RECOMMENDATION: That the Board approve the exercise of the first of four option years for 2023.

REVIEWED BY:


Mark McCauley, County Administrator

12/15/22
Date

X 
Approved by the Board of
Jefferson County Commissioners