REQUEST FOR PROPOSALS
KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT
2016 - 143

Project Title:	**Land Use Hearing Examiner**
Estimated Contract Period:	August 1, 2016, through August 1, 2017. Upon reappointment the term of office shall be four years. Amendments extending the period of performance, if any, shall be at the sole discretion of Kitsap County.
Proposal Due Date:	All responses must arrive by **3:00 p.m**. Pacific Time, on **July 14, 2016.**

SECTION A. SUMMARY OF PROJECT

1. Overview of Request:

The Kitsap County Board of Commissioners is seeking proposals for the services of a Land Use Hearing Examiner for Kitsap County. Initial appointment shall be for one (1) year; thereafter, upon reappointment, the term of office shall be four (4) years. The proposals should address all of the requested information indicated below.

The Hearing Examiner shall conduct administrative and quasi-judicial hearings on a variety of land use permits/applications, departmental decisions, State Environmental Policy Act (SEPA) appeals, and administrative appeals, within the jurisdiction of Kitsap County. The Examiner shall render decisions on such matters or provide recommendations to the Kitsap County Board of Commissioners consistent with Kitsap County Code, Title 2 and Title 21.

The Hearing Examiner is an independent contractor and not an employee of Kitsap County. Regular public hearings will be scheduled on the second and fourth Thursday of each month. Additional hearings may be scheduled as necessary.

To obtain copies of applicable ordinances and existing rules of procedure, or for questions, please contact the Department of Community Development at 360-337-5777 or visit the County website at http://www.kitsapgov.com/dcd/lu_env/he/

2. Other Duties:

The Examiner's other duties shall include:

- Administrative responsibility over deputy or pro-tempore Hearing examiners.
- Production of a written annual report, which shall contain a summary of decisions rendered and recommendations for improving the Hearing Examiner system.
- Pursuant to KCC Title 2 and the Kitsap County Office of the Hearing Examiner Rules of Procedure (Resolution 116-2009) the Examiner is required to render decisions or recommendations within 14 days of the close of the record on each matter. A copy of which must be sent to Kitsap County Department of Community Development (DCD) in Word format via email.
- 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.

Kitsap County DCD: Provides preparation of case files and records, and staff support during hearings; sets agendas in consultation with the Examiner; prepares legal notices; provides reproduction, mailing and distribution of notices

and decisions; and provides a staff recommendation on the case. Electronic copies of staff recommendations and records are provided for the Examiner's use, via email in Word format.

Prior to beginning work, the Examiner will be required to procure and maintain at the Examiner's expense, for the duration of the contract, comprehensive automobile liability insurance at statutorily required limits and workers' compensation coverage as 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's Risk Management Office prior to execution of the contract.

The contract will contain a conflict of interest statement, and the applicant shall be prepared to recuse him or herself from any case where a potential conflict of interest exists. The County will pay the cost of a pro tempore hearing examiner for up to 10 cases per year that fall into this category.

3. Content of Proposal:

The proposal shall indicate the applicant's background and demonstrate the applicant's familiarity with land use law and regulations and land use hearing processes.

The proposal shall provide examples of hearing format for both contested and uncontested decisions and recommendations.

The proposal shall demonstrate the extent of the applicant's familiarity with Kitsap County's land use regulations and processes and geographic knowledge of the area.

The proposal shall indicate the applicant's support staff and ability to meet deadlines required by Kitsap County Code.

A proposal shall indicate the proposed fees based on the above outline of tasks. The County requires two pricing structures in the proposal; an hourly rate and a fixed-rate, per case basis. For an hourly rate structure, an itemized list of services shall include:

- Hearings
- Hearing Examiner's Decision
- Pre/Post Hearing Orders
- Request for Clarification
- Request for Reconsideration
- Administrative Appeals
- SEPA Appeals
- Other various quasi-judicial documents

The proposal should indicate the applicant's ability to comply with the Americans with Disabilities Act, EEO, and any other applicable County, State or Federal laws.

The proposal shall be accompanied by:

- A list of professional references who can attest to the applicant's abilities; and
- Three writing samples, consisting of administrative decisions written by the applicant. If the applicant has no experience as a hearing examiner or administrative law judge, concise opinion memos or staff reports may be substituted for the administrative decisions.

The applicant shall sign and date the proposal.

4. Selection Criteria:

- Responsiveness and completeness of proposal (Maximum 10 points)
- Proven experience with similar work and the ability to meet deadlines required by code (Maximum 20 points)
- Price and fee structure (Maximum 20 points)
- Legally defensible decisions (Maximum 20 points)
- Knowledge of Kitsap County Code (Maximum 10 points)
- Organizational capacity/quality of associates (Maximum 20 points)

SECTION B. PROCUREMENT PROCESS

1. Procurement Schedule

The Procurement Schedule outlines the tentative schedule for important action dates and times. All dates after the proposal submission due date are approximate and may be adjusted as conditions indicate, without amending this document. It is the Responder's sole responsibility to periodically check the County's website for amendments to this document.

Figure 1. ***PROCUREMENT SCHEDULE***

Item	Action	Date
1.	Kitsap County Issues Letter to Request Proposals	June 13, 2016
2.	Questions will be accepted via email by Colby Wattling at cwattling@co.kitsap.wa.us until 3 p.m. Pacific Time	June 27, 2016
3.	Kitsap County will Issue responses via addendum	On or about July 1, 2016 (if questions are received)
4.	Responder must submit Proposal by 3:00 p.m. Pacific Time	July 14, 2016
5.	Kitsap County evaluation of Proposals Includes interviews	July 18-21, 2016
6.	Announce successful Proposal	On or about July 28, 2016
7.	Contract Execution	Anticipated August 1, 2016

SUBMITTAL OF PROPOSALS

Proposals must be received **no later than 3:00 p.m. on Thursday, July 14, 2016**. Submittals received later then the date and time stated above will not be accepted. Please submit six (6) copies of your Proposal to:

By mail to:
Colby Wattling, Buyer
Kitsap County Purchasing Office
614 Division Street, MS-7
Port Orchard, WA 98366

OR

For hand delivery, express , or courier:
Colby Wattling, Buyer
Kitsap County Administration Building
Purchasing Office – Fourth Floor
619 Division Street
Port Orchard, WA 9836

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CONTRACT FOR PROFESSIONAL SERVICES

This Contract for Professional Services (the Contract) is entered into by Kitsap County, a municipal corporation, having its principal offices at 614 Division Street, Port Orchard, Washington, 98366 (the County) and , having its principal offices at (the Contractor).

SECTION 1. EFFECTIVE DATE OF CONTRACT

The Contract will become effective on and terminate on . In no event will the Contract become effective unless and until it is approved and executed by the duly authorized representative of Kitsap County.

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 the Contract and incorporated by this reference.

2.2 The Contractor agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor or facilities will be furnished by the County.

2.3 The Contractor will perform the work specified in the Contract according to standard industry practice.

2.4 The Contractor will complete its work in a timely manner and in accordance with the schedule agreed to by the parties.

2.5 The Contractor will confer with the County from time to time during the progress of the work. The Contractor will 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

The County and the Contractor will 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:

<u>County's Contract Representative</u>

Contractor's Contract Representative

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 the Contract and incorporated by this reference.

4.2 The total amount payable under the Contract by the County to the Contractor in no event will exceed $.

4.3 Unless otherwise provided in the Contract, the Contractor may submit an invoice to the County once a month for payment of work actually completed to date. Subject to the other provisions of the Contract, the County generally will pay such an invoice within 30 days of receiving it.

4.4 The Contractor will be paid only for work expressly authorized in the Contract.

4.5 The Contractor will not be entitled to payment for any services that were performed prior to the effective date of the Contract or after its termination, unless a provision of the Contract expressly provides otherwise.

4.6 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 will make all necessary corrections without additional compensation. All work submitted by the Contractor will be certified by the Contractor and checked by the Contractor for errors and omissions. The Contractor will 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, any Contract renewal, amendment or modification must be in writing, be signed by both parties and be attached to the Contract. Work under a renewal, an amendment or a modification may not commence until the

renewal, amendment or modification has been approved by the County and has become effective.

SECTION 6. HOLD HARMLESS AND INDEMNIFICATION

6.1 The Contractor will hold harmless, indemnify and defend the County, its officers, officials, employees and agents, 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 acts, errors or omissions in the performance of the Contract. Provided, however, that the Contractor's obligation under this provision will not extend to injury, sickness, disability, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents.

6.2 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 the Contract that the Contractor expressly waives any immunity the Contractor might have had under such laws. By executing the Contract, the Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section will be incorporated, as relevant, into any contract the Contractor makes with any subcontractor or agent performing work under the Contract.

6.3 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.

SECTION 7. INSURANCE

7.1 **Professional Legal Liability.** The Contractor will maintain professional legal liability or professional errors and omissions coverage appropriate to the Contractor's profession. The coverage will have a limit of not less than $1 million per occurrence. The coverage will apply to liability for a professional error, act or omission arising out of the Contractor's services under the Contract. The coverage will not exclude bodily injury or property damage. The coverage will not exclude hazards related to the work rendered as part of the Contract or within the scope of the Contractor's services under the Contract, including testing, monitoring, measuring operations or laboratory analysis where such services are rendered under the Contract.

7.2 **Workers' Compensation and Employer Liability.** The Contractor will maintain workers' compensation insurance as required by Title 51, Revised Code of Washington, and will provide evidence of coverage to the Kitsap County Risk Management Division. If the Contract is for over $50,000, then the Contractor will also maintain employer liability coverage with a limit of not less than $1 million.

7.3 **Commercial General Liability.** The Contractor will maintain commercial general liability coverage for bodily injury, personal injury and property damage, subject to a limit of not less than $1 million per occurrence. The general aggregate limit will apply separately to the Contract and be no less than $2 million. The Contractor will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of the Contract. Specialized forms specific to the industry of the Contractor will be deemed equivalent provided coverage is no more restrictive than would be provided under a standard commercial general liability policy, including contractual liability coverage.

7.4 **Automobile Liability**. The Contractor will maintain automobile liability insurance as follows (check ONE of the following options):

Not Applicable.

The Contractor will maintain commercial automobile liability insurance with a limit of not less than $1 million each accident combined bodily injury and property damage. The aggregate limit will be at least $2 million. Coverage will include owned, hired and non-owned automobiles.

The Contractor will maintain automobile liability insurance or equivalent form with a limit of not less than $100,000 each accident combined bodily injury and property damage. The aggregate limit will be at least $300,000. 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 the Contract and the certificates of insurance must evidence that these conditions have been met. If the Contractor will use non-owned vehicles in performance of the Contact, the coverage will include owned, hired and non-owned automobiles.

7.5 **Miscellaneous Insurance Provisions**.

A. The Contractor's liability insurance provisions will be primary with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees and agents.

B. When such coverage is required, the Contractor's commercial general liability insurance and automobile liability insurance will include the County,

its officers, officials, employees and agents as an additional insured with respect to performance of services.

C. When such coverage is required, the Contractor's commercial general liability insurance and automobile liability insurance will contain no special limitations on the scope of protection afforded to the County as an additional insured.

D. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the County, its officers, officials, employees or agents.

E. The Contractor's insurance will apply separately to each insured against whom claim is made or suit is brought, subject to the limits of the insurer's liability.

F. The Contractor will include all subcontractors as insureds under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors will be subject to all of the requirements stated in these provisions.

G. The insurance limits mandated for any insurance coverage required by the Contract are not intended to be an indication of exposure, nor are they limitations on indemnification.

H. The Contractor will maintain all required policies in force from the time services commence until services are completed. Certificates, policies and endorsements scheduled to expire before completion of services will be renewed before expiration. If the Contractor's liability coverage is written as a claims-made policy, then the Contractor must evidence the purchase of an extended-reporting period or "tail" coverage for a three-year period after completion of the services.

7.6 **Verification of Coverage and Acceptability of Insurers**.

A. The Contractor will 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 re-insurers licensed in the State of Washington.

B. The Contractor will furnish the County with properly executed certificates of insurance or a signed policy endorsement which will clearly evidence all insurance required in this Section within 10 days after the effective date of the Contract. The certificate will, at a minimum, list limits of liability and coverage. The certificate will provide that the underlying insurance contract may not be canceled, or allowed to expire, except on 30-days' prior written

notice to the County. Any certificate or endorsement limiting or negating the insurer's obligation to notify the County of cancellation or changes must be amended so as not to negate the intent of this provision.

C. The Contractor will furnish the County with evidence that the additional-insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the County as an additional insured.

D. Certificates of insurance will show the certificate holder as Kitsap County and indicate "care of" the appropriate County office or department. The address of the certificate holder will be shown as the current address of the appropriate County office or department.

E. The Contractor will request that the Washington State Department of Labor and Industries, Workers Compensation Representative, send written verification to Kitsap County that the Contractor is currently paying workers' compensation.

F. Written notice of cancellation or change will be mailed to the County at the following address:

Risk Management Division
Kitsap County Department of Administrative Services
614 Division Street, MS-7
Port Orchard, WA 98366

G. The Contractor or its broker will provide a copy of all insurance policies specified in the Contract upon request of the Kitsap County Risk Manager.

SECTION 8. TERMINATION

8.1 The County may terminate the 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 the 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 the Contract.

8.2 If funding for the underlying project or matter is withdrawn, reduced or limited in any way after the Contract is signed or becomes effective, the County may summarily terminate the Contract notwithstanding any other termination provision in the Contract. Termination under this provision will 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 the Contract, and fails to cure the breach within 10 days of written notice to do so by the County, the County may terminate the 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 will perform under the Contract using only its bona fide employees or agents, and the obligations and duties of the Contractor under the Contract will 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 the Contract.

SECTION 10. INDEPENDENT CONTRACTOR

10.1 The Contractor's services will 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 the Contract.

10.2 The Contractor acknowledges that the entire compensation for the Contract is set forth in the compensation provisions of the 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 Kitsap County employees.

10.3 The Contractor will 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. NONDISCRIMINATION

The Contractor, its assignees, delegates or subcontractors will not discriminate against any person in performance of any of its obligations under the 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 the Contract will be “works for hire” as defined by the U.S. Copyright Act of 1976 and will be owned by the County. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights.

12.2 All design work done by the Contractor will be done on AutoCAD, release 12 or higher or other systems mutually agreed upon, an electronic copy of which will be submitted to the County upon request or at the end of the job. Should a construction project result from the work of the Contractor, the record drawings from the Contractor will be transposed onto the electronic design drawings and submitted to the County.

12.3 An electronic copy of all word processing documents will 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

The Contractor will 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

Differences, disputes and disagreements between the Contractor and the County arising under or out of the Contract will 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 will be decided by the County’s contract representative or designee. All rulings, orders, instructions and decisions of the County’s contract representative will be final and conclusive.

SECTION 15. CONFIDENTIALITY

The Contractor, its employees, subcontractors and their employees will maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of the Contract, except upon the prior express written consent of the County or an order entered by a court of competent jurisdiction. The Contractor will

promptly give the County written notice of any judicial proceeding seeking disclosure of such information.

SECTION 16. CHOICE OF LAW, JURISDICTION AND VENUE

16.1 The Contract will be construed as having been made and delivered within the State of Washington, and it is agreed by each party that the Contract will be governed by the laws of the State of Washington, both as to its interpretation and performance.

16.2 Any action at law, suit in equity or other judicial proceeding arising under or out of the Contract may be instituted and maintained only in a court of competent jurisdiction in Kitsap County, Washington.

SECTION 17. MISCELLANEOUS

17.1 **No Waiver.** The parties agree that the excuse or forgiveness of performance, or waiver of any provisions of the 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 the Contract at a later time.

17.2 **Tax Payments.** The Contractor will 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 the Contract upon receipt of a written request to do so from the County's contract representative or designee.

17.4 **Legal Compliance.** The Contractor and its subcontractors, employees, agents and representatives will comply with all applicable federal, state and local laws, rules and regulations in their performance under the Contract.

17.5 **Records Inspection and Retention.** The County may, at reasonable times, inspect the books and records of the Contractor relating to the performance of the Contract. The Contractor will retain for audit purposes all Contract-related records for at least six years after termination of the 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 the Contract and to the partners, successors, administrators and assigns of such other party in respect to all covenants to the Contract.

17.7 **Severability.** If a court of competent jurisdiction holds any provision of the Contract to be illegal, invalid or unenforceable, in whole or in part, the validity of

the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Contract did not contain the particular provision held to be invalid. If any provision of the Contract conflicts with any statutory provision of the State of Washington, the provision will be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.

17.8 **Entire Agreement.** The parties acknowledge that the Contract is the complete expression of their agreement regarding the subject matter of the contract. Any oral or written representations or understandings not incorporated in the Contract are specifically excluded.

17.9 **Notices.** Any notices will 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 the contract representatives provision of the Contract. Notice may also be given by facsimile with the original to follow by regular mail. Notice will be deemed to be given three days following the date of mailing, or immediately if personally served. For service by facsimile, service will be effective at the beginning of the next working day.

17.10 **Survival.** Those provisions of the Contract that by their sense and purpose should survive expiration or termination of the Contract shall so survive. Those provisions include, but are not necessarily limited to, the following: Sections 6.1-6.3 (Hold Harmless and Indemnification), 8.3 (Termination), 13 (Patent/Copyright Infringement), 14 (Disputes), 15 (Confidentiality), 16.1-16.2 (Choice of Law, Jurisdiction and Venue), 17.1 (Miscellaneous – No Waiver), 17.5 (Miscellaneous – Records Inspection and Retention) and Section 17.7 (Miscellaneous – Severability).

DATED this____day_____, 20__. DATED this____day_____, 20__.
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