

## **INTERLOCAL AGREEMENT FOR HEARING EXAMINER SERVICES IN THE CITY OF DEER PARK**

**THIS AGREEMENT**, made and entered into by and between Spokane County, a political subdivision of the State of Washington, having offices for the transaction of business at 1116 West Broadway Avenue, Spokane, Washington 99260, hereinafter referred to as "COUNTY" and the City of Deer Park, a municipal corporation of the State of Washington, having offices for the transaction of business at E. 316 Crawford Street, Deer Park, Washington 99006, hereinafter referred to as "CITY," jointly hereinafter referred to as the "PARTIES" or individually as a "PARTY." The COUNTY and CITY agree as follows:

### **SECTION NO. 1: RECITALS AND FINDINGS**

(a) The Board of County Commissioners of Spokane County has the care of County property and the management of County funds and business under RCW 36.32.120(6).

(b) Counties and cities may contract with each other to perform certain functions which each may legally perform under Chapter 39.34 RCW (Interlocal Cooperation Act).

(c) Pursuant to the provisions of RCW 36.70.970 the Board of County Commissioners of Spokane has adopted a Hearing Examiner System and codified the same under Spokane County Code Chapter 1.46.

(d) The City of Deer Park desires to utilize the services of Spokane County's Hearing Examiner for the purpose of hearing applications for Conditional Use Permits and Variances under the City Code as well as other matters.

### **SECTION NO. 2: DEFINITIONS**

(a) Agreement: "Agreement" means this Interlocal Agreement between the CITY and COUNTY regarding hearing examiner services.

(b) City: "CITY" means the City of Deer Park.

(c) County: "COUNTY" means Spokane County.

(d) Maintenance and Operations: "Maintenance and Operations" and "M&O" shall mean (1) those class codes (3000-5999 and 7000-9999) used by Spokane County in its budgetary process as prescribed by the BARS manual adopted by the State of Washington under Chapter 43.88 RCW so long as such expenditures are directly attributable and proportionate to services rendered to CITY under the terms of this Agreement.

(e) Services: "Services" means the services identified in Exhibit 1.

(f) Compensation: "Compensation" means that methodology set forth in Exhibit 2 used to establish the amount of money which the CITY will pay the COUNTY for providing Services.

(g) Uncontrollable Circumstances: "Uncontrollable Circumstances" means the following events: strikes, riots, wars, civil disturbances, insurrections, acts of terrorism, fires and floods, weather conditions, volcanic eruptions, lightning or earthquakes, or other acts of God at or near where the Services are performed and/or that directly affect providing of such Services.

(h) Hearing Examiner: "Hearing Examiner" means that person appointed by the Board of County Commissioners pursuant to Spokane County Code Section 1.46.030 to include any Hearing Examiner pro-tem. Provided, however, the COUNTY agrees to consider the recommendations of the CITY in conjunction with designating any Hearing Examiner pro-tem to hear CITY matters.

### **SECTION NO. 3: PURPOSE**

The purpose of this Agreement is to reduce to writing the PARTIES' understanding as to the terms and conditions under which the COUNTY will provide Services on behalf of the CITY. It is the intent of the PARTIES that Services to be provided by the COUNTY will be consistent with the CITY's Mayor-Council form of government provided for in Chapter 35A.12 RCW.

### **SECTION NO. 4: DURATION/WITHDRAWAL**

This Agreement shall commence on August 10, 2010 and run through December 31, 2010, unless one of the PARTIES provides notice of termination as set forth in Section 7.

At the conclusion of the initial term, this Agreement shall automatically be renewed from year to year thereafter effective January 1<sup>st</sup> to December 31<sup>st</sup>. All renewals shall be subject to all terms and conditions set forth herein except for the compensation provided for in Exhibit 2.

The PARTIES recognize it is highly unlikely that Exhibit 2 setting forth the new billing rates for each year's Services will be available at the start of any renewal time frame. Accordingly, until a new Exhibit 2 has been prepared and agreed to between the PARTIES, the PARTIES agree that the COUNTY will bill the CITY and the CITY will pay the COUNTY at the same billing rates paid in the previous year. Upon the PARTIES agreement on a new Exhibit 2, the CITY and COUNTY will reconcile payments to date under the previous years billing rates with the new billing rates. Any underpayment for any Services will be due in the first payment due following reconciliation. Any overpayment for any Services will be credited to the first monthly payment due following the reconciliation. The PARTIES agree that no interest shall be owing by either Party to the other Party for any overpayment or underpayment determined as a result of the reconciliation.

Any PARTY may withdraw at any time from this Agreement for any reason whatsoever upon a minimum of 30 days written notice as provided for in Section 7 to the other PARTY.

#### **SECTION NO. 5: COST OF SERVICES AND PAYMENTS**

The CITY shall pay the COUNTY the costs for Services provided under this Agreement as set forth in Exhibit 2, attached hereto and incorporated herein by this reference.

The COUNTY will bill the CITY for the cost of Services monthly, by the 15<sup>th</sup> of the month for the previous month. Payments by the CITY will be due by the 5<sup>th</sup> day of the following month. At the sole option of the COUNTY, a penalty may be assessed on any late payment by the CITY based on lost interest earnings had the payment been timely paid and invested in the Spokane County Treasurer's Investment Pool. The CITY may dispute any monthly billing. Pending resolution of any dispute, the PARTIES agree that the CITY shall pay timely that portion of the bill that is undisputed. In the event the CITY disputes any monthly billing it shall include in conjunction with the monthly payment a letter stating with specificity the basis for the dispute. The PARTIES agree to meet within thirty (30) calendar days of the COUNTY'S receipt of the documentation letter stating the basis for the CITY disputing any monthly billing to resolve the matter. In the event the PARTIES cannot mutually resolve the matter within the thirty (30) calendar day time frame, unless otherwise agreed by the PARTIES, the matter shall be resolved pursuant to the Dispute Resolution provisions set forth in Section No. 22. The selection of arbitrators as provided for in Section No. 22 shall commence within thirty (30) calendar days of the running of the thirty (30) calendar day time frame.

Any resolution of a disputed amount through the use of the arbitration process identified in Section 22 shall include, at the request of either PARTY, a determination of whether interest is appropriate, including the amount.

The PARTIES recognize that it is not always possible for either Party to discover errors in billing. The PARTIES further recognize that there must be some finality to addressing such errors. Accordingly, the PARTIES agree that both PARTIES are foreclosed from challenging any errors in billings if the matter is not drawn in writing to the other PARTY'S attention within thirty (30) calendar days of the last invoice of the calendar year. Errors raised within this time frame that are not mutually resolved shall be subject to the Dispute Resolution provisions set forth in Section No. 22.

#### **SECTION NO. 6: RELATED RESPONSIBILITIES IN CONJUNCTION WITH PROVIDING SERVICES**

The COUNTY or its authorized designees agree to attend staff meetings as requested by the CITY's Mayor or his/her designee.

The COUNTY or its authorized designees agree to meet upon request by the CITY's Mayor or his/her designee to discuss any Services provided under the terms of this Agreement.

The CITY agrees the COUNTY may use the COUNTY'S stationery in conjunction with providing Services under the terms of this Agreement.

#### **SECTION NO. 7: NOTICE**

All notices or other communications given hereunder shall be deemed given on: (1) the day such notices or other communications are received when sent by personal delivery; or (2) the third day following the day on which the same have been mailed by first class delivery, postage prepaid addressed to the COUNTY or the CITY at the address set forth below for such PARTY, or at such other address as either PARTY shall from time-to-time designate by notice in writing to the other PARTY.

COUNTY: Spokane County Chief Executive Officer  
or his/her authorized representative  
1116 West Broadway Avenue  
Spokane, Washington 99260

CITY: City of Deer Park City Clerk-Treasurer  
or his/her authorized representative  
E 316 Crawford  
PO Box F  
Deer Park, Washington 99006

### **SECTION NO. 8: REPORTING**

**Reports** — The COUNTY shall provide the CITY with reports documenting actual usage under this Agreement at the same time each invoice requesting payment is made, unless otherwise mutually agreed by the PARTIES. The PARTIES agree that the terminology "reports documenting usage" means that type of information provided by the COUNTY to other users of Services. Such reports shall be in a format as mutually agreed to between the PARTIES. The content and/or format for such reports may be changed from time-to-time by written agreement between CITY and COUNTY.

**Records Review** — The CITY shall be allowed to conduct random reviews of the records generated by the COUNTY in performance of this Agreement. The CITY will provide the COUNTY with reasonable advance notice of the records reviews. The PARTIES agree that they will make best efforts to achieve a resolution of any potential records confidentiality issues, including entering into confidentiality agreements or other similar mechanisms that will allow disclosure of the necessary information to accurately conduct a records review. If the CITY will be allowed to view only those records directly relating to Services provided within CITY's corporate boundaries, then the COUNTY must keep a log of original documents used to charge the CITY, and those documents must have identifying numbers or letters so the original source documents can be easily retrieved.

### **SECTION NO. 9: COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

## **SECTION NO. 10: ASSIGNMENT**

No PARTY may assign in whole or part its interest in this Agreement without the written approval of the other PARTY.

## **SECTION NO. 11: COUNTY EMPLOYEES**

The COUNTY shall appoint, hire, assign, retain and discipline all employees performing Services under this Agreement according to applicable collective bargaining agreements and applicable state and federal laws. At no time will COUNTY employees performing Services under this Agreement be deemed employees of the CITY.

The COUNTY agrees to meet and confer with the CITY with respect to staff that is assigned to provide Services. Issues of discipline or performance will be specifically handled according to COUNTY Policies.

## **SECTION NO. 12: LIABILITY**

(a) The COUNTY shall indemnify and hold harmless the CITY and its elected officials, officers, agents, and employees, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any negligent act or omission of the COUNTY, its elected officials, officers, agents, and employees, relating to or arising out of performing Services pursuant to this Agreement. In the event that any suit based upon such claim, action, loss, or damages is brought against the CITY, the COUNTY shall defend the same at its sole cost and expense; provided that the CITY reserves the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment in said suit be rendered against the CITY, and its elected officials, officers, agents, and employees, or jointly against the CITY and the COUNTY and their respective elected officials, officers, agents, and employees, the COUNTY shall satisfy the same.

(b) The CITY shall indemnify and hold harmless the COUNTY and its elected officials, officers, agents, and employees, from any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, by any reason of or arising out of any negligent act or omission of the CITY, its elected officials, officers, agents and employees, relating to or arising out of performing Services pursuant to this Agreement. In the event that any suit based upon such claim, action, loss or damages is brought against the COUNTY, the CITY shall defend the same at its sole cost and expense; provided that the COUNTY reserves the right to participate in said suit if any principal of governmental or public law is involved; and if final judgment in said suit be rendered against the COUNTY, and its elected officials, officers, agents, and employees, or jointly

against the COUNTY and the CITY and their respective elected officials, officers, agents, and employees, the CITY shall satisfy the same.

(c) If the comparative negligence of the PARTIES and their elected officials, officers, agents, and/or employees is a cause of such damage or injury, the liability, loss, cost, or expense shall be shared between the PARTIES in proportion to their relative degree of negligence and the right of indemnity shall apply to such proportion.

(d) Where an elected official, officer, agent, or employee of a PARTY is acting under the direction and control of the other PARTY, the PARTY directing and controlling the elected official, officer, agent, or employee in the activity and/or omission giving rise to liability shall accept all liability for the other PARTY'S elected official, officer, agent, or employee's negligence.

(e) Each PARTY's duty to indemnify shall survive the termination or expiration of the Agreement.

(f) The foregoing indemnity is specifically intended to constitute a waiver of each PARTY's immunity under Washington's Industrial Insurance Act, Chapter 51 RCW, respecting the other PARTY only, and only to the extent necessary to provide the indemnified PARTY with a full and complete indemnity of claims made by the indemnitor's employees. The PARTIES acknowledge that these provisions were specifically negotiated and agreed upon by them.

(g) The COUNTY and the CITY agree to either self insure or purchase policies of insurance covering the matters contained in this Agreement with coverages of not less than \$5,000,000 per occurrence with \$5,000,000 aggregate limits including professional liability and auto liability coverages.

### **SECTION NO. 13: RELATIONSHIP OF THE PARTIES**

The PARTIES intend that an independent contractor relationship will be created by this Agreement. The COUNTY shall be an independent contractor and not the agent or employee of the CITY, that the CITY is interested only in the results to be achieved and that the right to control the particular manner, method and means in which the Services are performed is solely within the discretion of the COUNTY. Any and all employees who provide Services to the CITY under this Agreement shall be deemed employees solely of the COUNTY. The COUNTY shall be solely responsible for the conduct and actions of all employees under this Agreement and any liability that may attach thereto. Likewise, no agent, employee, servant or representative of the CITY shall be deemed to be an employee, agent, servant or representative of the COUNTY for any purpose.

#### **SECTION NO. 14: MODIFICATION**

This Agreement may be modified in writing by mutual written agreement of the PARTIES.

#### **SECTION NO. 15: PROPERTY AND EQUIPMENT**

The ownership of all property and equipment utilized in conjunction with providing the Services shall remain with the original owner, unless otherwise specifically and mutually agreed to by the PARTIES to this Agreement. For the purpose of this section, the terminology "owner" means that PARTY which paid the full purchase price for the property or equipment.

#### **SECTION NO. 16: HEADINGS**

The section headings appearing in this Agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to define, limit, or extend the scope or intent of the sections to which they pertain.

#### **SECTION NO. 17: TIME OF ESSENCE OF AGREEMENT**

Time is of the essence of this Agreement and in case either PARTY fails to perform the obligations on its part to be performed at the time fixed for the performance of the respective obligation by the terms of this Agreement, the other PARTY may, at its election, hold the other PARTY liable for all costs and damages caused by such delay.

#### **SECTION NO. 18: UNCONTROLLABLE CIRCUMSTANCES/IMPOSSIBILITY**

A delay or interruption in or failure of performance of all or any part of this Agreement resulting from Uncontrollable Circumstances shall be deemed not a default under this Agreement.

A delay or interruption in or failure of performance of all or any part of this Agreement resulting from any change in or new law, order, rule, or regulation of any nature which renders providing of Services in accordance with the terms of this Agreement legally impossible, and any other circumstances beyond the control of the COUNTY which render legally impossible the performance by the COUNTY of its obligations under this Agreement, shall be deemed not a default under this Agreement.



### **SECTION NO. 19: FILING**

This Agreement shall be filed by the COUNTY with such offices or agencies as required by Chapter 39.34 RCW or listed on the COUNTY'S web site or other electronically retrievable public source.

### **SECTION NO. 20: EXECUTION AND APPROVAL**

The PARTIES warrant that the officers executing below have been duly authorized to act for and on behalf of the PARTY for purposes of confirming this Agreement.

### **SECTION NO. 21: ALL WRITINGS CONTAINED HEREIN/BINDING EFFECT**

This Agreement contains terms and conditions agreed upon by the PARTIES. The PARTIES agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement. No changes or additions to this Agreement shall be valid or binding upon the PARTIES unless such change or addition is in writing, executed by the PARTIES.

### **SECTION NO. 22: DISPUTE RESOLUTION**

Any dispute between the PARTIES which cannot be resolved between the PARTIES shall be subject to arbitration. Except as provided for to the contrary herein, such dispute shall first be reduced to writing and considered by the COUNTY CEO and the CITY'S Mayor. If the COUNTY CEO and the CITY'S Mayor cannot resolve the Dispute, it will be submitted to arbitration. The provisions of Chapter 7.04A RCW shall be applicable to any arbitration proceeding.

The COUNTY and the CITY shall have the right to designate one person each to act as an arbitrator. The two selected arbitrators shall then jointly select a third arbitrator. The decision of the arbitration panel shall be binding on the PARTIES and shall be subject to judicial review as provided for in Chapter 7.04A RCW.

The costs of the arbitration panel shall be equally split between the PARTIES.

### **SECTION NO. 23: VENUE STIPULATION**

This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by each PARTY that this Agreement shall be governed by the laws of the State of Washington both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding

for the enforcement of this Agreement, or any provision hereto, shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

#### **SECTION NO. 24: SEVERABILITY**

The PARTIES agree that if any parts, terms, or provisions of this Agreement are held by the courts or arbitrators to be illegal, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the PARTIES shall not be affected in regard to the remainder of the Agreement. If it should appear that any part, term, or provision of this Agreement is in conflict with any statutory provision of the State of Washington, then the part, term, or provision thereof that may be in conflict shall be deemed inoperative and null and void insofar as it may be in conflict therewith and this Agreement shall be deemed to modify to conform to such statutory provision.

#### **SECTION NO. 25: RECORDS**

All public records prepared, owned, used, or retained by the COUNTY in conjunction with providing Services under the terms of this Agreement shall be deemed CITY property and shall be made available to the CITY upon request by the CITY subject to the attorney client and attorney work product privileges set forth in statute, court rule, and/or case law. The COUNTY will notify the CITY of any public disclosure request under Chapter 42.56 RCW for copies or viewing of such records as well as the COUNTY'S response thereto.

#### **SECTION NO. 26: DISCLAIMER**

Except as otherwise provided, this Agreement shall not be construed in any manner that would limit either PARTY'S authority or powers under laws.

#### **SECTION NO. 27: COMPLIANCE WITH LAWS**

The PARTIES shall observe all federal, state, and local laws, ordinances and regulations, to the extent that they may be applicable to the terms of this Agreement.

#### **SECTION NO. 28: ASSURANCE**

The CITY shall pay the COUNTY the true and full cost of all Services provided under this Agreement. The intent of the PARTIES is that neither PARTY will subsidize the other and that the CITY will not subsidize any other jurisdiction that is receiving similar services.

**SECTION NO. 29: RCW 39.34 REQUIRED CLAUSES**

- A. **PURPOSE:** See Section No. 3 above.
- B. **DURATION:** See Section No. 4 above.
- C. **ORGANIZATION OF SEPARATE ENTITY AND ITS POWERS:** No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
- D. **RESPONSIBILITIES OF THE PARTIES:** See provisions above.
- E. **AGREEMENT TO BE FILED:** See Section No. 19 above.
- F. **FINANCING:** Each PARTY shall be responsible for the financing of its contractual obligations under its normal budgetary process.
- G. **TERMINATION:** See Section No. 4 above.
- H. **PROPERTY UPON TERMINATION:** See Section No. 15 above

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IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed on the date and year above their respective signatures.

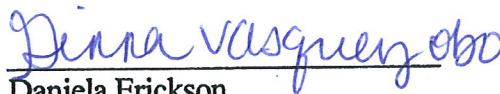
APPROVED BY THE BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, WASHINGTON AT AN OPEN PUBLIC MEETING ON THE 10th DAY OF August, 2010.



  
Mark Richard, Chairman

ATTEST:  
Clerk of the Board

  
Bonnie Mager, Vice-Chairman

  
Daniela Erickson

  
Todd Mielke, Commissioner

APPROVED BY THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON AT AN OPEN PUBLIC MEETING ON THE 7 DAY OF July, 2010.

  
Robert Whisman, Mayor

ATTEST:

  
Deby Cragun, City Clerk-Treasurer

## **EXHIBIT 1**

Hearing Examiner Services shall include all time spent by the Hearing Examiner in making site visits, preparing for and conducting the public hearing, reviewing the record, drafting a written decision and rulings on motions, organizing and mailing a decision or recommendation, drafting necessary correspondence, and conducting hearings on (i) Conditional Use Permits and Variances pursuant to the Deer Park Municipal Code, (ii) appeals of administrative decisions or determinations relating to City development regulations or zoning provisions, and (iii) such other matters assigned to be heard by the Hearing Examiner or the City's Board of Adjustment by ordinances of the City or the Deer Park Municipal Code.

Hearing Examiner Services shall also include the time spent by the Hearing Examiner in meeting with CITY staff to discuss improvements to the CITY Hearing Examiner system, if specifically authorized by the CITY'S Mayor or his/her designee.

The Hearing Examiner shall charge and retain the costs of preparing and certifying records and transcripts for appeals of CITY Hearing Examiner decisions from the appellant as provided by statute or CITY ordinance or resolution.

CITY shall be responsible for providing legal advice to the Hearing Examiner in conjunction with him or her performing Hearing Examiner Services under the terms of this Agreement.

Hearings shall be held in that location designated by the CITY.

Spokane County  
Hearing Examiner  
City of Deer Park  
2010 Contract

Position	No.	2010 Adopted Budget	Direct Labor Cost per Hour	M&O Per Hour	Indirect Per Hour	Cost Per Hour
Hearing Examiner	1	121,437.18	79.50	8.93	4.80	93.23
Staff Assistant I	1	34,584.28	22.64		1.23	23.87
	2	156,021.45	102.14	8.93	6.02	117.09

Note: Rate based on indirect costs per A-87 Plan applied to total expenditures.

5.42%

**Maintenance & Operation**

Adopted M & O

14,141

**Less: Expenditure Reductions**

4940 Printing - reimbursed for 100% of cost

(500)

Adjusted M & O

13,641

**Annual Hours**

Available Annual Hours	1,950.00	
Less: 11 Paid Holidays	82.50	(11 days x 7.5 hours/day)
Less: 10 Vacation Days	75.00	(10 days x 7.5 hours/day)
Less: 4 Sick Days	30.00	(4 days x 7.5 hours/day)
Less: Misc 30 minutes/day (mtgs, training)	117.50	(235 avg days/year x 30 minutes/day divided by 60 minutes/hour)
Less: Two 15-minute breaks/day	117.50	(235 avg days/year x 30 minutes/day divided by 60 minutes/hour)
<b>Annual Hours Worked</b>	<b>1,527.50</b>	

Spokane County Maximum Annual Work Hours = 7.5 hours/day x 5 days/week x 52 weeks/year = 1,950 hours/year

Spokane County Maximum Annual Work Days = 5 days/week x 52 weeks/year = 260 days/year

Spokane County Average Annual Work Days = 260 max days/year - 11 paid holidays - 10 vacation days - 4 sick days = 235 avg days/year