



THE CITY OF FIRCREST

REQUEST FOR PROPOSAL HEARING EXAMINER SERVICES

The City of Fircrest (“City”) is seeking a qualified person or firm to contract for Hearing Examiner Services related to land use decisions. **The deadline for submittals is 5:00 P.M. on March 15, 2019.**

BACKGROUND

The City of Fircrest has a population of 6,710 and is 1.6 square miles. The City is in the process of transitioning from the current system, which relies on a volunteer Planning Commission to make land use decisions and the elected City Council to be the appeal body to the hearing examiner system to review land use applications. The Examiner’s decision is final unless appealed to Pierce County Superior Court.

DESCRIPTION OF THE POSITION

The Hearing Examiner conducts fair and impartial hearings on such matters as land use and development permit and zoning applications, adequacy of environmental documents and decisions and code enforcement appeals. At hearings, the Examiner regulates the conduct of the proceedings, rules on motions, administers oaths, and makes evidentiary and procedural rulings. The Hearing Examiner prepares timely written decisions and recommendations based upon the hearing record, Fircrest Municipal Codes, the Fircrest Comprehensive Plan, state and federal law and legal precedent.

The following is representative of the caseload of the Hearing Examiner over the past several years:

2015 – 1 conditional use permit with 2 major variances

2016 – 1 major site plan amendment

2017 – 1 major variance; 1 preliminary site plan

2018 – 1 preliminary site plan review with a major variance; 1 conditional use permit

PREFERRED QUALIFICATIONS

- A licensed attorney in the state of Washington and/or shall have training and experience necessary to perform the duties as described.
- Demonstrated ability to exercise good judgment when applying law to specific facts.
- Working knowledge of relevant law and legal principles, ability to write clearly and concisely.
- Ability to establish and maintain positive and effective control of hearing proceedings.
- Ability to develop and maintain the respect of City staff, community groups, government officials and the general public.

- Ability to read, interpret and explain complex factual and legal issues including procedure and reference materials.
- Located in Pierce County or has substantial experience within Pierce County.

TERM OF SERVICES

The duration of this Agreement will be from execution to December 31, 2020 with the option of subsequent renewals.

GENERAL STATEMENT OF SCOPE OF SERVICES

The Hearing Examiner conducts quasi-judicial hearings on complex land use matters and regulatory compliance issues on behalf of the City and issues decisions and recommendations supported by findings and conclusions. The individual or firm with whom the City contracts shall perform the duties of the Hearing Examiner as set forth in the Fircrest Municipal Code (“FMC”).

The Hearing Examiner is responsible for conducting hearings on and adjudicating quasi-judicial cases involving a variety of complex land use and regulatory compliance issues, and other issues which the City Council may designate to the Hearing Examiner by ordinance or resolution. The Hearing Examiner shall issue decisions and recommendations based on relevant ordinances, regulations, policies, statutes, and other authorities.

Hearing Examiner decisions are appealable to either the City Council or Superior Court, as specified in the Municipal Code.

Hearings will be conducted at Fircrest City Hall, 115 Ramsdell Street, Fircrest Washington. The City will mail public notices, advertise the hearing, provide staff support at hearings conducted by the Hearing Examiner to mark exhibits and record proceedings, and mail decisions to parties of record.

All duties shall be performed in a manner consistent with accepted practices for examiner services, including interpreting, reviewing and implementing the City's land use regulations and the pertinent and appropriate provisions of Fircrest Municipal Code (FMC) Title 22 and 12, conducting orderly and impartial hearings and hearing appeals, and preparing written decisions in a timely manner which are understandable and based upon reasoning and all applicable laws.

In addition, the examiner shall take such action as may be specifically assigned by other sections of the municipal code or by ordinance or resolution, and as may be delegated or assigned from time-to-time by action of the City Council.

HEARING EXAMINER TO HAVE ITS OWN ADMINISTRATIVE SUPPORT

The City will provide a properly equipped hearing room and on-site audio-visual assistance. The Hearing Examiner shall independently provide for the Examiner’s clerk and/or administrative staff and other support services. Scheduling of hearings is generally done in coordination with staff from the City’s Planning and Building Department. The City is responsible for recording the proceedings for the purpose of records retention.

Changes to this intended level of City support – either related to requiring more or less support – should be specifically addressed in any proposal submitted.

COMPENSATION

The City and any party selected for these services will enter into a professional services agreement which will address compensation. Proposals must clearly set forth the fees or fee structure (e.g., hourly rate, monthly retainer, per-case fee) to be charged for the proposed services.

The City will reimburse the Hearing Examiner for actual out of pocket expenses incurred in the conduct of the Examiner’s duties, including mileage to and from hearings and to sites selected for viewing to gain a satisfactory understanding of the facts and issues, as well as for parking, long distance telephone charges, fax transmission charges, and copying charges. All invoices are expected to identify the basis of the charge and the matter or proceeding for which it was incurred.

SELECTION PROCESS

All proposals will be reviewed and screened by the City Manager. Proposals will be evaluated by considering the Proposer’s quality of experience, the strength of the approach described in the proposal, the responses to the questions provided below, and the cost to the City.

The City Manager will convene an interview panel to include members of the City Council and staff, and finalists will be invited for interviews. Following the interviews, the City Manager will make an appointment for City Council confirmation.

SCHEDULE OF EVENTS*

The approximate schedule has been developed to allow the City of Fircrest to proceed in an orderly manner to consider all factors involved in reaching a decision as quickly as possible.

Release of RFP	February 25, 2019
Proposal Submission Deadline	March 15, 2019 (5:00 P.M.)
Interview Selected Vendors	Week of March 18, 2019
Complete Final Selection	April 1, 2019

* Dates subject to change

PROPOSAL SUBMISSION

A. All proposals are to be sent to:

City of Fircrest
ATTN: Angelie Stahlnecker
115 Ramsdell Street
Fircrest, WA 98406

Or emailed to: astahlnecker@cityoffircrest.net

Proposers are responsible for assuring delivery. Direct inquiries to the address above.

- B. One reproducible copy of the proposal may be or mailed/delivered to the address listed above, or sent by e-mail with the proposal attached as a PDF file. Proposers are responsible for assuring delivery.
- C. Proposals must be received by 5:00 P.M. on March 15, 2019. No faxed or telephoned proposals will be accepted.
- D. All proposals must include the following information:
- The name(s) of individual(s) who will be providing Hearing Examiner services, including resume/bio.
 - The specific experience the individual(s) have in serving as a municipal Hearing Examiner.
 - Disclosure of any criminal or professional disciplinary findings that have been entered against any of the examiners who will be providing services.
 - Professional references.
 - A cost proposal (per case or hourly)
- E. Right to Reject Any and/or All Proposals.
The City of Fircrest reserves the right to reject any/or all proposals, to waive technicalities and/or information and accept any proposals deemed to be in its best interest.

INSTRUCTIONS TO REPLY TO THIS REQUEST FOR PROPOSALS

To reply to this RFP, please submit a proposal of no more than five (5) pages stating:

1. Name and contact information. Identity and provide a resume or similar description of the educational and professional background for the individual who desires to serve as the City's Hearing Examiner, including the name of that individual's law school and the year of graduation from law school. Also provide information related to the professional and educational background of the individual who will serve as the clerk or administrative support for the Hearing Examiner.
2. Hearing Examiner experience. Describe relevant experience working for other jurisdictions as a Hearing Examiner, ALJ, or other quasi-judicial official. If the Proposer is a law firm, provide this information for all attorneys anticipated to provide services to the City.
3. Expertise. Describe your experience with administering and interpreting: land use laws, codes, and municipal regulations in the State of Washington; environmental laws, such as SEPA and NEPA; and other similar local, state, and federal laws.
4. Civil violation proceedings. Describe your experience with code enforcement and other types of administrative appeals, including appeal proceedings outside of the land use context.
5. Provide a statement describing your view of a municipal Hearing Examiner's roles and duties. Describe your approach to conducting hearings and your perspective about what constitutes a "good result" for hearings over which the Hearing Examiner might preside.

6. Fee proposal. Provide a fee proposal that describes how you will be paid for the proposed services (e.g., hourly rate, monthly retainer, per-case fee).
7. Provide two Hearing Examiner reports. Provide two Hearing Examiner writing samples (i.e., recommendations, decisions, or orders) for hearings conducted by the Proposer, or similar written reports or documents demonstrating similar experience. Writing samples are not included in the five-page limit.
8. Provide professional references. Provide contact information for three professional references with personal knowledge of the Proposer's work and experiences that demonstrate qualifications and ability to serve as the City's Hearing Examiner.

As stated in the first part of this RFP, all materials shall be mailed or submitted electronically in one packet to the following email address: astahlnecker@cityoffircrest.net

ALL APPLICATION MATERIALS MUST BE SUBMITTED BY 5:00 P.M. ON MARCH 15, 2019.

At the City's discretion, proposals submitted after the due date and time may be considered. Proposers accept all risks of late delivery of submitted proposals.

RESERVATIONS

The City reserves the right to cancel or reissue the RFP or to revise the timeline at any time. The City reserves the right to reject any and all proposals and to waive minor irregularities in the proposal process. The City may accept any proposal if such action is believed to be in the best interest of the City.

PROPOSED AGREEMENT

A proposed Agreement is provided as an attachment with this RFP. It is important that each Proposer review the Agreement prior to submitting a proposal, particularly the Scope of Work. The City typically does not accept changes to the Agreement's terms and conditions. Should the Proposer wish to propose changes to the Agreement's terms and conditions, the desired changes must be identified in the proposal. The City is under no obligation to accept such proposed changes and may reject a proposal based on proposed changes unacceptable to the City.

The City will verify Proposer representations that appear in the proposal. Failure of a Proposer to perform services as represented may result in elimination of the Proposer from further competition or in termination of the Agreement, consistent with the terms of the Agreement.

NONDISCRIMINATION

The firm/individual shall comply with all applicable nondiscrimination, equal opportunity, minority and women's business enterprises and fair labor standards requirements, and all other applicable City, State of Washington, and Federal laws and regulations.

NON-ENDORSEMENT

As a result of the selection of a firm/individual to supply products and/or services to the City, firm/individual agrees to make no reference to the City in any literature, promotional material, brochures, sales presentation or the like without the express written consent of the City.

NON-COLLUSION

Submittal and signature of a statement of qualifications swears that the document is genuine and not a sham or collusive, and not made in the interest of any person not named, and that the firm/individual has not induced or solicited others to submit a sham offer, or to refrain from proposing.

CONFLICT OF INTEREST

No examiner shall conduct or participate in any hearing, decision or recommendation in which the examiner has a direct or indirect substantial financial or familial interest, or concerning which the examiner has had substantial prehearing contacts with proponents or opponents. No member of City Council who has such an interest or has had such contacts shall participate in the consideration of an appeal from or a review of an examiner's decision.

COMPLIANCE WITH LAWS AND REGULATIONS

In addition to nondiscrimination and affirmative action compliance requirements previously listed, the firm/individual ultimately awarded a contract shall comply with federal, state and local laws, statutes and ordinances relative to the execution of the work. This requirement includes, but is not limited to, protection of public and employee safety and health; environmental protection; waste reduction and recycling; the protection of natural resources; permits; fees; taxes; and similar subjects.

PUBLIC RECORDS

Under Washington state law, the documents (including but not limited to written, printed, graphic, electronic, photographic or voice mail materials and/or transcriptions, recordings or reproductions thereof) submitted in response to this RFQ (the "documents") become a public record upon submission to the City, subject to mandatory disclosure upon request by any person, unless the documents are exempted from public disclosure by a specific provision of law. If the City receives a request for inspection or copying of any such documents it will promptly notify the person submitting the documents to the City (by U.S. mail and by fax if the person has provided a fax number) and upon the written request of such person, received by the City within five (5) days of the mailing of such notice, will postpone disclosure of the documents for a reasonable period of time as permitted by law to enable such person to seek a court order prohibiting or conditioning the release of the documents. The City assumes no contractual obligation to enforce any exemption.

**CITY OF FIRCREST
PROFESSIONAL SERVICES AGREEMENT
SAMPLE**

1. DATE AND PARTIES

THIS AGREEMENT, for reference purposes only, is dated the ___th day of _____, 2019 and entered into by and between the City of Fircrest, a political subdivision of the State of Washington and hereinafter referred to as "City" and _____, hereinafter referred to as "Consultant" in consideration of the mutual benefits, terms and conditions hereinafter specified.

2. PROJECT DESIGNATION

The Consultant is retained by the City to _____.

3. SCOPE OF SERVICES

The Consultant agrees to perform in a good and professional manner the tasks described in Exhibit A, Scope of Services, attached hereto and incorporated herein by this reference. The Consultant agrees to perform the services including the provision of all labor, materials, equipment and supplies as identified in Exhibit A. The Consultant shall perform the services as an independent contractor and shall not be deemed, by virtue of this Agreement and the performance thereof, to have entered into any partnership, joint venture, employment or other relationship with the City.

4. ASSIGNMENT

The Consultant shall not sublet or assign any of the services covered by this agreement without the express written consent of the City.

5. NON-WAIVER

Waiver by the City of any provision of this agreement or any time limitation provided for in this agreement shall not constitute a waiver of any other provisions.

6. TERMS OF AGREEMENT

Notwithstanding, the date of execution hereof, this Agreement shall be in effect December 11, 2018 through the duration of the Capital Campaign to include any donor recognition event. Either party may terminate this Agreement upon thirty (30) day's written notice to the other party.

7. PAYMENT

Upon receipt of an invoice from the Consultant, progress payments may be made on a monthly basis for work completed. Each invoice shall itemize the work performed. The total cost for services shall not exceed _____ without approval of the Fircrest City Council. Invoices should itemize how much and with whom time is spent.

8. PERFORMANCE AND STANDARDS

Consultant shall perform its work to conform to generally accepted professional standards. Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings and specifications prepared under this Agreement. Consultant shall, without additional compensation, correct or reverse any errors or omissions in such work.

9. HOLD HARMLESS, DEFENSE, AND INDEMNITY

With the exception of the sole negligence of the City, its employees, or elected officials, the Consultant shall protect, defend, indemnify, and hold harmless the City of Fircrest, its employees, directors, officers, and Councilmembers from any and all claims, demands, losses, actions, and liabilities to or by any person or entity arising out of all work, injuries, or property damage pursuant to this agreement, buildings, parking, grounds, or other property of any kind. This agreement includes both Personal Injury, Bodily Injury, Death or Property Damage as well as other loss or damage.

10. INSURANCE

Consultant will obtain and maintain in force at least the following minimum insurance coverage covering all activity under this agreement, and as to which the City shall be named as primary non-contributory additional insured on the Liability insurance:

- A. Commercial General Liability \$1,000,000/\$2,000,000 aggregate
- B. Comprehensive Automobile Liability \$1,000,000 per accident

Per Fircrest Municipal Code 9.90.140, a certificate of insurance showing the foregoing will be submitted to the City for approval fourteen (14) days before work commences.

The minimum limits above do not limit the contractor’s liability to the City or public.

11. CONSULTANT’S REPRESENTATIONS

The Consultant hereby represents that it has all necessary licenses and certifications to perform the services provided for herein, and is qualified to perform such services.

12. COMPLIANCE WITH LAWS

The Consultant shall be duly licensed and shall comply with all applicable laws, ordinances, and codes of the Federal, State, and local governments. Per Fircrest Municipal Code 5.04.020, Consultant agrees to obtain a City of Fircrest business license prior to performing any work pursuant to this Agreement.

13. TERMINATION

If the Consultant violates any of the covenants undertaken herein, or any of the duties imposed upon it by the Agreement, this Agreement may be terminated by either party immediately with cause, and without cause upon thirty (30) days’ written notice, served to the other party by certified mail. In such case, Consultant shall be compensated by the City for all work performed to the date of termination.

14. VENUE STIPULATION

This Agreement has been and shall be considered as having been made and delivered within the State of Washington both as to interpretation and performance. Any action in law or equity, or judicial proceeding for the enforcement of this Agreement, or any of the provisions contained therein, shall be instituted and maintained only in Pierce County Superior Court, Tacoma, Washington.

15. STATUS OF CONSULTANT

Neither the Consultant nor personnel employed by the Consultant shall acquire any rights or status in City employment, nor shall they be deemed employees or agents of the City for any purpose. Consultant shall be deemed an independent Contractor and shall be responsible in full for payment of its employees, including prevailing wages, worker's compensation, insurance, payroll deductions, and all related costs.

16. COMPLIANCE WITH CITY POLICY

The Consultant shall comply with approved City policies concerning the administration of City-owned property, and the provisions of the policy shall have the same force and effect as provisions of this agreement to the extent not inconsistent herewith.

17. TAXES

Consultant shall comply with federal, state, and local tax laws, Social Security Acts, Unemployment Compensation and Workers Compensation Acts in so far as applicable to the performance of this Agreement.

18. SAFETY REQUIREMENT

All work performed under the terms of this agreement shall be performed in such a manner as to provide maximum safety to the public and employees of the City of Fircrest.

19. NON-DISCRIMINATION

The Consultant agrees not to discriminate against any customer, employee, or applicant for employment, subcontractor, supplier or materialman, because of gender, sexual orientation, race, color, creed, religion, national origin, marital status, age or handicap, except for a bona fide occupational qualification. The Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any service for the City now or in the future.

20. SEVERABLE PROVISIONS

Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

21. INTEGRATED AGREEMENT

This agreement, together with attachments or addenda, represents the entire and integrated agreement between the representations, or agreements, written or oral. This agreement may be amended only by written instrument signed by both City and Consultant.

DATED this _____ th day of _____, 2019

CITY OF FIRCREST

THE BRIGGS

By: _____
Scott Pingel, City Manager

By: _____

Dated: _____

Dated: _____

APPROVED AS TO FORM:

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

SAMPLE