



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Personal Services Contract with Carl D. Cox, Attorney at Law, for
Land Use Hearings Officer

Purpose/Outcome	Execution of a contract between the Department of Transportation and Development and Carl D. Cox, Attorney at Law, for land use decisions to be made by a hearings officer who acts on behalf of the Board of County Commissioners in conducting public hearings and issuing written decisions applying land use regulations set forth in the Clackamas County Zoning and Development Ordinance.
Dollar Amount and Fiscal Impact	Not to exceed \$175,000 per fiscal year with a total not to exceed amount of \$1,050,000 for six (6) years.
Funding Source	214 7441 00 431270 - Land use hearings officer fees are funded through a mix of application fees and General Fund.
Duration	Total contract duration is six (6) years starting July 1, 2021, ending June 30, 2027. This is structured as a two (2)-year initial term and two (2), two (2)-year optional renewals.
Previous Board Action/Review	Board Issues Session; June 1, 2021
Strategic Plan Alignment	<p>1. <i>How does this item align with your department's Strategic Business Plan goals?</i> A core purpose in the Land Use and Development line of business is to provide planning, property information and permitting services so all in the County can experience a safe, thriving and well-planned community, make informed decisions, invest and develop property. Land use hearings are a legally required component of the land use permitting system.</p> <p>2. <i>How does this item align with the County's Performance Clackamas goals?</i> Ensuring community members can develop land and structures, and have access to permitting services, aligns with the Performance Clackamas strategic priority of growing a vibrant economy.</p>
Counsel Review	Reviewed and Approved by Counsel: May 24, 2021 ARN
Procurement Review	1. <i>Was the item processed through Procurement?</i> <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Contact Person	Jennifer Hughes, Planning Director, Department of Transportation and Development, 503-742-4518
Contract No.	Contract #4133

Background:

Clackamas County’s Planning and Zoning Division (“Division”), which is part of the Department of Transportation and Development, administers state, regional and local land use and zoning regulations in unincorporated areas. In this work, they review residential, commercial and industrial development land use permits and develop long-range planning strategies.

As outlined in the County’s Zoning and Development Ordinance, in executing the procedures of reviewing land use applications, the Division contracts with a Land Use Hearings Officer to conduct public hearings and issue decisions on certain land use permit applications.

The prior hearings officer terminated the contract due to accepting alternative employment. The County temporarily filled the vacancy through an interim direct procurement until a full RFP process was completed. As a result of the RFP, the Division proposes to contract with two (2) qualified hearings officers to provide professional Land Use Hearings Officer services on a rotating basis. The contracts have an initial term of two (2) years with two (2) optional two (2)-year renewals for a total potential contract term of six (6) years.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on February 17, 2021. Proposals were opened on March 30, 2021. The County received two (2) Proposals: Carl D. Cox, Attorney at Law, and Joe Turner P.C., Municipal Hearing Official. An evaluation committee of DTD personnel scored both Carl D. Cox, Attorney at Law, and Joe Turner P.C., Municipal Hearing Official, and determined both were responsive and highly qualified and needed to meet the business needs of the department.

Recommendation:

Staff respectfully recommends that the Board approve and execute the Land Use Hearings Officer Personal Services Contract with Carl D. Cox, Attorney at Law.

Sincerely,

Dan Johnson

Dan Johnson, Department Director

Placed on the BCC Agenda _____ by Procurement and Contract Services



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #4133**

This Personal Services Contract (this “Contract”) is entered into between **Carl D. Cox, Attorney at Law** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of the Department of Transportation and Development.

ARTICLE I.

1. **Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire **June 30, 2023** with the option for two (2) additional two (2) year renewals thereafter subject to the mutual agreement of the parties. However, such expiration shall not extinguish or prejudice the County’s right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
2. **Scope of Work.** Contractor shall provide the following personal services: Land Use Hearings Officer (“Work”), further described in **Exhibit A**.
3. **Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **\$175,000** per fiscal year, with a total value, including all optional renewals, not to exceed **one million fifty thousand dollars (\$1,050,000)** for accomplishing the Work. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit B, Fee Schedule. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

The not to exceed consideration amounts described above reflect the maximum Contractor could be paid for performing the Work. However, as detailed in Exhibit A, the Work will be performed as needed by, and upon request of, County on a rotating basis with other selected land use hearing officers. Contractor shall only be compensated for Work requested by County and actually performed by Contractor. Because the actual amount of Work needed is uncertain, and is shared among several land use hearing officers, County does not promise or guarantee any specific amount of Work will be requested from Contractor, nor does County promise or guarantee that Contractor will be paid the full not-to-exceed amount described above.

4. **Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.
5. Invoices shall reference the above Contract Number and be submitted to: Darcy Renhard, DRenhard@clackmas.us.
6. **Travel and Other Expense.** Authorized: Yes No

If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference

and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

7. **Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, and Exhibit B.

8. **Contractor and County Contacts.**

Contractor Administrator: Carl D. Cox Phone: 503-504-1770 Email: carldcox@yahoo.com	County Administrator: Jennifer Hughes Phone: 503-742-4518 Email: jenniferh@clackamas.us
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Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. **AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.

3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.

5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.

6. **GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

7. **RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be

caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 10, 12, 13, 14, 15, 17, 20, 21, 25, 27, 28, and 31 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.
- Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the Work actually performed and accepted by County as of the date of notice of termination, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
- c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

27. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

28. CONFIDENTIALITY. Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable

belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County. Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

- 29. KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.
- 30. COOPERATIVE CONTRACTING.** Pursuant to ORS 279A.200 to 279A.225, other public agencies may use this Contract resulting from a competitive procurement process unless the Contractor expressly noted in their proposal/quote that the prices and services are available to the County only. The condition of such use by other agencies is that any such agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with Contractor; the County accepts no responsibility for performance by either the Contractor or such other agency using this Contract. With such condition, the County consents to such use by any other public agency.
- 31. MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Signatures on next page

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Carl D. Cox, Attorney at Law

Carl D. Cox
Carl D. Cox (May 24, 2021 12:01 PDT)

May 24, 2021

Authorized Signature

Date

Carl D. Cox

May 24, 2021

Name / Title (Printed)

Attorney at Law

Oregon Business Registry #

Sole Proprietor

Entity Type / State of Formation

Clackamas County Board of Commissioners

Chair Person

Recording Secretary

Date

Approved as to Form:



May 24, 2021

County Counsel

Date

**EXHIBIT A
PERSONAL SERVICES CONTRACT
SCOPE OF WORK**

1. BACKGROUND

Clackamas County's Planning and Zoning Division ("Division"), which is part of the Department of Transportation and Development, administers state, regional and local land use and zoning regulations in unincorporated areas. In this work, they review residential, commercial and industrial development land use permits and develop long-range planning strategies.

As outlined in the County's Zoning and Development Ordinance, in executing the procedures of reviewing land use applications, contracts with a Land Use Hearings Officer to conduct public hearings and issue decisions on certain land use permit applications.

Contracting for Services shall be handled on a rotating basis, or availability of Contractor to meet the County's needs for land use hearings.

2. SCOPE OF WORK

2.1. Hearings Officer Requirements: Contractor shall provide the following:

- 2.1.1.** Conduct and decide most quasi-judicial land use matters under the Clackamas County Zoning and Development Ordinance and provide written decision of such to the Planning Director.
- 2.1.2.** Contractor must be a licensed attorney, a member of the Oregon State Bar, and possess at least 5 years of experience in land use law.
- 2.1.3.** Possess considerable knowledge of land use planning laws, rules, procedures and implementation measures, including city, county, state, and federal laws, as well as private rights in real property and land use development process.
- 2.1.4.** Experienced in preparing for and conducting land use public hearings in an orderly and impartial manner while maintaining neutrality without prejudice or prejudgment.
- 2.1.5.** Work effectively with a wide range of individuals in often stressful situations by communicating complex ideas in a logical and concise manner both orally and in writing.
- 2.1.6.** Skilled in identifying and addressing key issues presented in oral and written arguments, and writing legally and factually sound findings of fact and law.
- 2.1.7.** Familiar with contested case litigation in the state court, with administrative hearings and with the rules of evidence and procedure;
- 2.1.8.** Consistently, efficiently, promptly and fairly hear and decide cases;
- 2.1.9.** Must work agreeably with people and deal evenhandedly with all parties to a hearing.

2.2. Hearings Officer Required Tasks and Skills.

- 2.2.1.** Prepare and conduct (via Zoom or in person, as determined by the County) quasi-judicial public land use hearings, apply knowledge and skill in land use law and hearings procedures, in accordance with the Clackamas County Zoning and Development Ordinance, Oregon law and applicable administrative rules.

- 2.2.2. Apply knowledge and expertise in County and Oregon land use laws to render legally defensible, sound written decisions that contain:
 - a. An explanation of facts on which the Land Use Hearings Officer has relied;
 - b. The pertinent provisions of County Ordinances, plans, case law, or other laws;
 - c. Conclusions must be formed from facts and law; and, any other relevant or required information and are easily understandable, grammatically correct, and concise.
- 2.2.3. Provide office facilities and administrative help for preparation of all written decisions, as necessary, as well as computer equipment, including audio and video capability, and internet connectivity sufficient to conduct hearings using the Zoom platform.
- 2.2.4. Written decision to the Planning Director must be within 20 calendar days of the close of a record.
- 2.2.5. Contractor must notify the Planning Director not less than six (6) weeks prior to dates of anticipated unavailability.
- 2.2.6. Maintain accurate, itemized records (by land use application) for the purpose of computing compensable time and submit said records to the Clackamas County Planning Director by the end of each month throughout the duration of the contract.
- 2.2.7. Contractor shall notify Planning Director via email of any potential or actual conflict of interest.

2.3. County Responsibilities. The County shall be responsible for the following activities:

- a. Schedule time and place of all Clackamas County Zoning and Development Ordinance Type III land use hearings a minimum of five (5) weeks in advance and all appeal hearings a minimum of three (3) weeks in advance, excluding those hearings that are continued by the Land Use Hearings Officer
- b. Notify the appropriate parties of hearings and decisions pursuant to the Clackamas County Zoning and Development Ordinance.
- c. Provide a hearing room for any in-person hearings will set up and facilitate any Zoom hearings.
- d. Provide for audio recording for all quasi-judicial land use hearings.

2.4. Land Use Hearing Schedule.

- 2.4.1. Land Use Hearings are held weekly, as needed, (typically on Thursdays, excluding legal holidays) from 9 am to 5 pm using the Zoom platform or in person at the Development Services Building located at 150 Beavercreek Road, Oregon City, OR.

2.5. Annual Review:

The County may conduct an annual performance review of services based on the following criteria:

- a. Delays in decision making and written orders.
- b. Amount of time spent handling land use cases.
- c. Ability to understand issues and law.
- d. Ability to deal effectively with applicants, members of the public and county staff.
- e. Ability to conduct orderly, effective, and efficient land use hearings.
- f. Ability to write decisions that are in alignment with state laws, state codes, and County ordinances.

**Exhibit B
FEE SCHEDULE**

Fees

Hourly rate includes preparing and conducting hearings, writing a legal final order, responding to County staff inquiries. Labor and direct expenses shall be billed at the rates listed below.

<i>Labor Expenses</i>	
Hearings Officer labor	\$160 per hour *
<i>Direct Expenses</i>	
Postage & delivery	Actual

Invoices.

Invoices shall include elements described in the table below. Any direct expenses identified on the invoice must be accompanied with a copy of the receipt for any direct expenses identified on the invoice.

<i>ITEM</i>	<i>Hours/Minutes</i>	<i>HOURLY RATE*</i>	<i>TOTAL</i>
Date of hearing _____			
Casefile No. ____ (Case Name ____)			
Preparation		\$160.00	\$ _____
Hearing**		\$160.00	\$ _____
Decision		\$160.00	\$ _____
<i>SUBTOTAL</i>			\$ _____
Direct Expenses (Actual Expenses)			
<i>TOTAL</i>			\$ _____

*Hourly rate billed in minimum 1/4-hour increments.

**In-person hearings will be billed at a two-hour minimum.



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Personal Services Contract with Joe Turner, P.C., Municipal Hearing Official, for
Land Use Hearings Officer

Purpose/Outcome	Execution of a contract between the Department of Transportation and Development and Joe Turner, P.C., Municipal Hearing Official, for land use decisions to be made by a hearings officer who acts on behalf of the Board of County Commissioners in conducting public hearings and issuing written decisions applying land use regulations set forth in the Clackamas County Zoning and Development Ordinance.
Dollar Amount and Fiscal Impact	Not to exceed \$175,000 per fiscal year with a total not to exceed amount of \$1,050,000 for six (6) years.
Funding Source	214 7441 00 431270 - Land use hearings officer fees are funded through a mix of application fees and general fund.
Duration	Total contract duration is six (6) years starting July 1, 2021, ending June 30, 2027. This is structured as a two (2)-year initial term and two (2), two (2)-year optional renewals.
Previous Board Action/Review	Board Issues Session; June 1, 2021
Strategic Plan Alignment	<ol style="list-style-type: none"> <i>How does this item align with your department's Strategic Business Plan goals?</i> A core purpose in the Land Use and Development line of business is to provide planning, property information and permitting services so all in the County can experience a safe, thriving and well-planned community, make informed decisions, invest and develop property. Land use hearings are a legally required component of the land use permitting system. <i>How does this item align with the County's Performance Clackamas goals?</i> Ensuring community members can develop land and structures, and have access to permitting services, aligns with the Performance Clackamas strategic priority of growing a vibrant economy.
Counsel Review	Reviewed and Approved by County Counsel: May 24, 2021 ARN
Procurement Review	1. <i>Was the item processed through Procurement?</i> <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Contact Person	Jennifer Hughes, Planning Director, Department of Transportation and Development, 503-742-4518
Contract No.	Contract #4136

Background:

Clackamas County’s Planning and Zoning Division (“Division”), which is part of the Department of Transportation and Development, administers state, regional and local land use and zoning regulations in unincorporated areas. In this work, they review residential, commercial and industrial development land use permits and develop long-range planning strategies.

As outlined in the County’s Zoning and Development Ordinance, in executing the procedures of reviewing land use applications, the Division contracts with a Land Use Hearings Officer to conduct public hearings and issue decisions on certain land use permit applications.

The prior hearings officer terminated the contract due to accepting alternative employment. The County temporarily filled the vacancy through an interim direct procurement until a full RFP process was completed. As a result of the RFP, the Division proposes to contract with two (2) qualified hearings officers to provide professional Land Use Hearings Officer services on a rotating basis. The contracts have an initial term of two (2) years with two (2) optional two (2)-year renewals for a total potential contract term of six (6) years.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on February 17, 2021. Proposals were opened on March 30, 2021. The County received two (2) Proposals: Carl D. Cox, Attorney at Law, and Joe Turner P.C., Municipal Hearing Official. An evaluation committee of DTD personnel scored both Carl D. Cox, Attorney at Law, and Joe Turner P.C., Municipal Hearing Official, and determined both were responsive and highly qualified and needed to meet the business needs of the department.

Recommendation:

Staff respectfully recommends that the Board approve and execute the Land Use Hearings Officer Personal Services Contract with Joe Turner, P.C., Municipal Hearing Official.

Sincerely,

Dan Johnson

Dan Johnson, Department Director

Placed on the BCC Agenda _____ by Procurement and Contract Services



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #4136**

This Personal Services Contract (this "Contract") is entered into between **Joe Turner P.C., Municipal Hearing Official** ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of the Department of Transportation and Development.

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire **June 30, 2023** with the option for two (2) additional two (2) year renewals thereafter subject to the mutual agreement of the parties. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 2. Scope of Work.** Contractor shall provide the following personal services: Land Use Hearings Officer ("Work"), further described in **Exhibit A**.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **\$175,000** per fiscal year, with a total value, including all optional renewals, not to exceed **one million fifty thousand dollars (\$1,050,000)**, for accomplishing the Work. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit B, Fee Schedule. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

The not to exceed consideration amounts described above reflect the maximum Contractor could be paid for performing the Work. However, as detailed in Exhibit A, the Work will be performed as needed by, and upon request of, County on a rotating basis with other selected land use hearing officers. Contractor shall only be compensated for Work requested by County and actually performed by Contractor. Because the actual amount of Work needed is uncertain, and is shared among several land use hearing officers, County does not promise or guarantee any specific amount of Work will be requested from Contractor, nor does County promise or guarantee that Contractor will be paid the full not-to-exceed amount described above.

- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.
- 5.** Invoices shall reference the above Contract Number and be submitted to: Darcy Renhard, DRenhard@clackmas.us.
- 6. Travel and Other Expense.** Authorized: Yes No

If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference

and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

7. **Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, and Exhibit B.

8. **Contractor and County Contacts.**

Contractor Administrator: Joe Turner P.C. Phone: 503-663-7092 Email: jtpc@frontier.com	County Administrator: Jennifer Hughes Phone: 503-742-4518 Email: jenniferh@clackamas.us
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Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. **AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.

3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.

5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.

6. **GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

7. **RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be

caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contact in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 10, 12, 13, 14, 15, 17, 20, 21, 25, 27, 28, and 31 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.
- Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the Work actually performed and accepted by County as of the date of notice of termination, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.

- c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

27. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

28. CONFIDENTIALITY. Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized

use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County. Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

- 29. KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.
- 30. COOPERATIVE CONTRACTING.** Pursuant to ORS 279A.200 to 279A.225, other public agencies may use this Contract resulting from a competitive procurement process unless the Contractor expressly noted in their proposal/quote that the prices and services are available to the County only. The condition of such use by other agencies is that any such agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with Contractor; the County accepts no responsibility for performance by either the Contractor or such other agency using this Contract. With such condition, the County consents to such use by any other public agency.
- 31. MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Signatures on next page

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Joe Turner P.C., Municipal Hearing Official

Joe Turner
Joe Turner (May 25, 2021 07:51 PDT)

May 25, 2021

Authorized Signature _____ Date _____

Joe Turner President

Name / Title (Printed) _____

533037-99

Oregon Business Registry # _____

S Corp. State of Oregon

Entity Type / State of Formation _____

Clackamas County Board of Commissioners

Chair Person _____

Recording Secretary _____ Date _____

Approved as to Form: _____

WJ May 25, 2021

County Counsel _____ Date _____

**EXHIBIT A
PERSONAL SERVICES CONTRACT
SCOPE OF WORK**

1. BACKGROUND

Clackamas County's Planning and Zoning Division ("Division"), which is part of the Department of Transportation and Development, administers state, regional and local land use and zoning regulations in unincorporated areas. In this work, they review residential, commercial and industrial development land use permits and develop long-range planning strategies.

As outlined in the County's Zoning and Development Ordinance, in executing the procedures of reviewing land use applications, contracts with a Land Use Hearings Officer to conduct public hearings and issue decisions on certain land use permit applications.

Contracting for Services shall be handled on a rotating basis, or availability of Contractor to meet the County's needs for land use hearings.

2. SCOPE OF WORK

2.1. Hearings Officer Requirements: The Hearings Officer shall provide the following:

- 2.1.1. Conduct and decide most quasi-judicial land use matters under the Clackamas County Zoning and Development Ordinance and provide written decision of such to the Planning Director.
- 2.1.2. Contractor must be a licensed attorney, a member of the Oregon State Bar, and possess at least 5 years of experience in land use law.
- 2.1.3. Possess considerable knowledge of land use planning laws, rules, procedures and implementation measures, including city, county, state, and federal laws, as well as private rights in real property and land use development process.
- 2.1.4. Experienced in preparing for and conducting land use public hearings in an orderly and impartial manner while maintaining neutrality without prejudice or prejudgment.
- 2.1.5. Work effectively with a wide range of individuals in often stressful situations by communicating complex ideas in a logical and concise manner both orally and in writing.
- 2.1.6. Skilled in identifying and addressing key issues presented in oral and written arguments, and writing legally and factually sound findings of fact and law.
- 2.1.7. Familiar with contested case litigation in the state court, with administrative hearings and with the rules of evidence and procedure;
- 2.1.8. Consistently, efficiently, promptly and fairly hear and decide cases;
- 2.1.9. Must work agreeably with people and deal evenhandedly with all parties to a hearing.

2.2. Hearings Officer Required Tasks and Skills.

- 2.2.1. Prepare and conduct (via Zoom or in person, as determined by the County) quasi-judicial public land use hearings, apply knowledge and skill in land use law and hearings procedures, in accordance with the Clackamas County Zoning and Development Ordinance, Oregon law and applicable administrative rules.

- 2.2.2. Apply knowledge and expertise in County and Oregon land use laws to render legally defensible, sound written decisions that contain:
 - a. An explanation of facts on which the Land Use Hearings Officer has relied;
 - b. The pertinent provisions of County Ordinances, plans, case law, or other laws;
 - c. The conclusions the Land Use Hearings Officer has formed from facts and law; and, any other relevant or required information and are easily understandable, grammatically correct, and concise.
- 2.2.3. Provide office facilities and administrative help for preparation of all written decisions, as necessary, as well as computer equipment, including audio and video capability, and internet connectivity sufficient to conduct hearings using the Zoom platform.
- 2.2.4. Written decision to the Planning Director must be within 20 calendar days of the close of a record.
- 2.2.5. Contractor must notify the Planning Director not less than six (6) weeks prior to dates of anticipated unavailability.
- 2.2.6. Maintain accurate, itemized records (by land use application) for the purpose of computing compensable time and submit said records to the Clackamas County Planning Director by the end of each month throughout the duration of the contract.
- 2.2.7. Contractor shall notify Planning Director via email of any potential or actual conflict of interest

2.3. County Responsibilities. The County shall be responsible for the following activities:

- a. Schedule time and place of all Clackamas County Zoning and Development Ordinance Type III land use hearings a minimum of five (5) weeks in advance and all appeal hearings a minimum of three (3) weeks in advance, excluding those hearings that are continued by the Land Use Hearings Officer
- b. Notify the appropriate parties of hearings and decisions pursuant to the Clackamas County Zoning and Development Ordinance.
- c. Provide a hearing room for any in-person hearings will set up and facilitate any Zoom hearings.
- d. Provide for audio recording for all quasi-judicial land use hearings.

2.4. Land Use Hearing Schedule.

- 2.4.1. Land Use Hearings are held weekly, as needed, (typically on Thursdays, excluding legal holidays) from 9 am to 5 pm using the Zoom platform or in person at the Development Services Building located at 150 Beaver Creek Road, Oregon City, OR.

2.5. Annual Review:

The County may conduct an annual performance review of services based on the following criteria:

- a. Delays in decision making and written orders.
- b. Amount of time spent handling land use cases.
- c. Ability to understand issues and law.
- d. Ability to deal effectively with applicants, members of the public and county staff.
- e. Ability to conduct orderly, effective, and efficient land use hearings.
- f. Ability to write decisions that are in alignment with state laws, state codes, and County ordinances.

**Exhibit B
FEE SCHEDULE**

Fees

Hourly rate includes travel time to and from hearings, preparation, conducting hearings, preparing a legal final order, responding to County staff inquiries. Labor and direct expenses shall be billed at the rates listed below.

<i>Labor Expenses</i>	
Hearings Officer labor	\$215.00 per hour*
<i>Direct Expenses</i>	
Postage & delivery	Actual

Invoices.

Invoices shall include elements described in the table below. Any direct expenses identified on the invoice must be accompanied with a copy of the receipt for any direct expenses identified on the invoice.

<i>ITEM</i>	<i>UNITS</i>	<i>HOURLY RATE*</i>	<i>TOTAL</i>
Date of hearing _____			
Casefile No. ____ (Case Name ____)			
Preparation	hours	\$215.00	\$ _____
Hearing	hours	\$215.00	\$ _____
Decision	hours	\$215.00	\$ _____
<i>SUBTOTAL</i>			\$ _____
Direct Expenses (Actual Expenses)			
<i>TOTAL</i>			\$ _____

*Hourly rate billed in minimum 1/4-hour increments.