

**PROFESSIONAL SERVICES CONTRACT
FOR
CITY OF YAKIMA HEARING EXAMINER**

PARTIES:

The parties to this contract are the CITY OF YAKIMA, 129 N. Second Street, Yakima, Washington 98901 ("City" herein), and GARY M. CUILLIER, Attorney at Law, 314 N. Second Street, Yakima, Washington 98901 ("Cuillier" or "Examiner" herein).

RECITALS:

1. City of Yakima utilizes a Hearing Examiner for land use matters occurring throughout the City.
2. In order to encourage consistency in land use decisions, and because of Cuillier's experience with land use matters in the City of Yakima, the City wishes to contract with Cuillier as Hearing Examiner.

AGREEMENT:

1. **Engagement of Hearing Examiner.** The City hereby hires Cuillier, and Cuillier agrees to serve, as Hearing Examiner for the purposes set forth in the City's various ordinances and land use regulations. Unless terminated pursuant to paragraph 13, the term of the engagement of the Hearing Examiner shall be for four (4) years.
2. **Character and Extent of Services.** Cuillier shall perform the services of Hearing Examiner for the City as required in the City's ordinances, as well as other duties as may be assigned by the Code Administration or Planning Manager from time to time.
3. **Pro Tem Hearing Examiner.** It is contemplated that the City Council will appoint a Pro Tem Hearing Examiner to serve in the event of absence or inability of the Hearing Examiner to act.
4. **Case Assignment.** The Community Development Director, or his/her designee, shall assign cases. While it is contemplated that the Hearing Examiner will hear the majority of cases, the Community Development Director shall assure that the Pro Tem Examiner is assigned a sufficient number and variety of cases to maintain the knowledge, expertise and skills necessary for effective performance of Hearing Examiner duties.
5. **Additional Duties.** The Examiner shall coordinate with the Pro Tem Hearing Examiner when appropriate in order to insure consistency of analysis and efficient decision-making. The Examiner's duty to determine matters efficiently shall include the duty to issue written findings and conclusions for all matters coming before the Examiner within ten (10) working days of the conclusion of the hearing on each matter unless a longer period is agreed to in writing by the applicant. The Examiner's failure to comply with this duty will result in deduction from compensation otherwise due the Examiner in the amount of \$100.00 for each day of delay beyond ten (10) working days after the hearing conclusion.
6. **Liaison.** The Community Development Director or his/her representative, shall serve as the City's liaison with the Examiner.

7. Independent Contract. The relationship of the Examiner to the City is that of an independent contractor rendering professional services. The Examiner shall have no authority to execute contracts or to make commitments on behalf of the City, except as authorized herein or by City ordinances, and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the City and the Examiner.

8. Professional Fees. The Examiner shall be paid by the City for professional services rendered under this contract at the rate of One Hundred Fifty Five Dollars (\$155.00) per hour.

8.1 In addition to hourly compensation, the Examiner shall be reimbursed for direct non-salary expenses such as out-of-town travel, training costs, specialized reference materials, and planning related memberships. To be eligible for reimbursement, the Code Administration or Planning Manager shall approve training, reference materials and memberships prior to purchase.

8.2 The payment provided in this section shall be full compensation for services rendered, including all labor, materials, supplies, equipment, and necessary incidentals.

9. Itemized Statements. By the 5th day of each month the Examiner will provide to the City an itemized statement for services and expenses incurred during the previous month. There shall be an attachment itemizing services rendered for administrative matters, a second attachment itemizing services rendered for substantive matters, and a third attachment itemizing out of pocket expenses.

10. Payment Schedule. Payments shall be made on the 20th of the month for statements received by the 5th day of the same month.

11. Facilities to be Furnished by Hearing Examiner. The Examiner shall furnish and maintain an office, equipment, library, and clerical staff suitable and adequate for performing the services to be rendered pursuant to this contract. The City shall provide at its expense hearing rooms, recording equipment, and related supplies.

12. Ownership of Documents. The record developed before the Examiner, including the Examiner's decision or recommendation, shall be the property of the City. The Examiner's work product, consisting of notes, research, and preliminary drafts, shall be the property of the Examiner.

13. Right to Terminate Contract. The Hearing Examiner may be removed by the City Council pursuant to YMC 1.43.040. For purposes of this paragraph, "cause" shall include, but not be limited to, a determination by the City Council that the Examiner is not giving due consideration to proper procedure or is not conducting hearings in a prudent manner, giving due regard to the appearance of fairness doctrine, laws regarding conflicts of interest, and/or other laws, procedures, and regulations dealing with the subject matter under consideration.

The City or the Examiner may terminate this contract for cause or without cause upon giving the City ninety (90) days written notice. The Hearing Examiner shall continue work on any pending matters, and the City shall pay for such work, even if it occurs after the 90 day period.

14. No Personal Liability. The City shall defend, indemnify and hold harmless the Examiner from all liability, loss or damage, including costs of defense he may suffer as a result of claims, demands, actions, damages, costs or judgments which result from the activities to be performed by the Examiner pursuant to this Agreement. This defense and indemnity agreement does not apply to claims arising from bad faith or malicious performance by the Examiner of his duties herein.

15. Non-Assignment. This contract is personal to the Examiner and is not assignable by the Examiner to any other individual.

16. Amendment. This contract can only be amended by the written agreement of both parties.

17. Interest of Public Officials. No member of the governing body of the City and no officer, employee, or agent of the City shall have any personal financial interest, direct or indirect, in this contract. The Examiner shall take appropriate steps to assure compliance.

18. Interest of Hearing Examiner. The Examiner covenants that he presently has no interest and shall not acquire an interest, direct or indirect, in any property, which is the subject of a proceeding before the Examiner, which would conflict in any manner or degree with the performance of his services hereunder.

19. Term. This contract shall be deemed to have commenced on January 1, 2020 and shall terminate December 31, 2023 unless prior to said date it is renewed for an additional period on terms agreeable to the City and the Examiner.

EXECUTED this ____ day of December, 2019

CITY OF YAKIMA

By: _____
Alex Meyerhoff, Interim City Manager

ATTEST:

By: _____
Sonya Claar-Tee
City Clerk

EXECUTED this 2nd day of December, 2019

HEARING EXAMINER

By: Gary M. Cuillier
Gary M. Cuillier

Gary M. Cuillier

ATTORNEY AT LAW

314 N. SECOND STREET
YAKIMA, WASHINGTON 98901

(509) 575-1800
FAX: (509) 452-4601

November 21, 2019

Rosalinda Ibarra
Yakima City Planning Division
129 North 2nd Street
Yakima, WA 98901

Re: Professional Services Contract for City of Yakima Hearing Examiner

Dear Rosalinda,

Enclosed please find my signed Hearing Examiner renewal contract postdated for the first working day of the month stated.

Again, please relay my thanks to those who will be recommending it to the City Council.

Yours very truly,



GARY CUILLIER

GMC: krr
Enclosure