

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

**PARTIES:**

The parties to this contract are the CITY OF YAKIMA, 129 N. Second Street, Yakima, Washington 98901 ("City" herein), and PATRICK SPURGIN, Attorney at Law, 411 N. Second Street, Yakima, Washington 98901 ("Spurgin" or "Pro Tem" 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 Spurgin's experience with land use matters in the City of Yakima, the City wishes to contract with Spurgin as Hearing Examiner Pro Tem.

**AGREEMENT:**

1. **Engagement of Hearing Examiner Pro Tem.** 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. The City hereby hires Spurgin, and Spurgin agrees to serve, as Hearing Examiner Pro Tem for the purposes set forth in the City's various ordinances and land use regulations.
2. **Character and Extent of Services.** Spurgin shall perform the services of Hearing Examiner Pro Tem 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. **Case Assignment.** The Community Development Director, or his/her designee, shall assign cases to the Pro Tem. While it is contemplated that the Hearing Examiner will hear the majority of cases, the Community Development Director shall assure that the Pro Tem is assigned a sufficient number and variety of cases to maintain the knowledge, expertise and skills necessary for effective performance of Hearing Examiner duties.
4. **Additional Duties.** The Pro Tem shall coordinate with the Hearing Examiner in order to insure consistency of analysis and efficient decision-making. The Pro Tem's duty to determine matters efficiently shall include the duty to issue written findings and conclusions for all matters coming before the Pro Tem 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 Pro Tem's failure to comply with this duty will result in deduction from compensation otherwise due the Pro Tem in the amount of \$100.00 for each day of delay beyond ten (10) working days after the hearing conclusion.
5. **Liaison.** The Community Development Director, or his/her representative, shall serve as the City's liaison with the Pro Tem.

**6. Independent Contract.** The relationship of the Pro Tem to the City is that of an independent contractor rendering professional services. The Pro Tem 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 Pro Tem.

**7. Professional Fees.** The Pro Tem 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.

**7.1** In addition to hourly compensation, the Pro Tem 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 Community Development Director shall approve training, reference materials and memberships prior to purchase.

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

**8. Itemized Statements.** By the 5<sup>th</sup> day of each month the Pro Tem 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.

**9. Payment Schedule.** Payments shall be made on the 20<sup>th</sup> of the month for statements received by the 5<sup>th</sup> day of the same month.

**10. Facilities to be Furnished by Pro Tem.** The Pro Tem 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.

**11. Ownership of Documents.** The hearing record developed before the Pro Tem, including without limitation staff reports, hearing exhibits, public comment documentation and the Pro Tem's decision or recommendation, shall be the property of the City. The Pro Tem shall cooperate by providing any and all responsive documents not otherwise exempt (as determined by the City) if requested by a Public Records Act request. All records associated with this contract shall be retained in compliance with the Washington State Secretary of State records retention schedule.

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

**13. No Personal Liability.** The City shall defend, indemnify and hold harmless the Pro Tem 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 Pro Tem pursuant to this Agreement. This defense and indemnity agreement does not apply to claims arising from bad faith or malicious performance by the Pro Tem of his duties herein.

**14. Non-Assignment.** This contract is personal to the Pro Tem and is not assignable by the Pro Tem to any other individual.

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

**16. 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 Pro Tem shall take appropriate steps to assure compliance.

**17. Interest of Pro Tem.** The Pro Tem 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 Pro Tem, which would conflict in any manner or degree with the performance of his services hereunder.

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

EXECUTED this \_\_\_\_ day of December, 2019

CITY OF YAKIMA

By: \_\_\_\_\_  
Alex Meyerhoff, Interim City Manager

ATTEST:

By: \_\_\_\_\_  
Sonya Claar-Tee  
City Clerk

EXECUTED this \_\_\_\_\_ day of December, 2019

EXAMINER PRO-TEM

By: \_\_\_\_\_  
Patrick Spurgin