

**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 ANDREW KOTTKAMP, Attorney at Law, 435 Orondo Avenue, Wenatchee, Washington 98801 ("Kottkamp" or "Examiner" herein).

RECITALS:

1. City of Yakima utilizes a Hearing Examiner for land use matters occurring throughout the City, as well as other matters as outlined in the Yakima Municipal Code.

2. The City contracts with a Hearing Examiner, Gary Cuillier, and Hearing Examiner Pro Tem, Pat Spurgin, however, the City has a need for another Hearing Examiner Pro Tem for cases where both have a conflict or are unavailable to hear a matter before a hearing examiner.

3. Andrew Kottkamp is willing and able to perform the duties of Hearing Examiner Pro Tem when the City's other two contracted examiners are unavailable or have a conflict with a case, and can serve on a case-by-case basis as Hearing Examiner Pro Tem of the City of Yakima.

AGREEMENT:

1. **Engagement of Hearing Examiner.** The City hereby hires Kottkamp, and Kottkamp agrees to serve, as Hearing Examiner Pro Tem 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 one (1) year and be on an "on-call" basis to take cases where the City's Hearing Examiner, and Hearing Examiner Pro Tem, are both unavailable and/or have a conflict of interest.

2. **Character and Extent of Services.** Kottkamp 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 their designee, is responsible for assigning cases. Cases will only be assigned to Kottkamp if the City's Hearing Examiner and Hearing Examiner Pro Tem Pat Spurgin are unavailable or unable to serve.

4. **Additional Duties.** The Pro Tem shall coordinate with the Hearing Examiner when appropriate 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 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.

5. **Liaison.** The Community Development Director or their 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 Sixty Five Dollars (\$165.00) per hour.

7.1 In addition to hourly compensation, in the event that the Community Development Director requests the Pro Tem to undertake out-of-town travel, training activities, acquisition of specialized reference materials, and participation or membership in planning related organizations, the Pro Tem shall be reimbursed for direct non-salary expenses incurred for such out-of-town travel, training costs, costs for specialized reference materials, and planning related membership participation or membership fees.

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 5th 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. The City will strive to make payments within thirty (30) days of the date a statement for services is received.

10. Facilities to be Furnished by Hearing Examiner. 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 record developed before the Pro Tem, including the Pro Tem's decision or recommendation, shall be the property of the City. The Pro Tem's work product, consisting of notes, research, and preliminary drafts, shall be the property of the Pro Tem.

12. Right to Terminate Contract. The Hearing Examiner Pro Tem 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 other party ninety (90) days written notice. The Pro Tem shall continue to 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 they 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 their 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 they presently have 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 their services hereunder.

19. Term. This contract shall be deemed to have commenced on the date of signature and shall terminate December 31, 2024, 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 January, 2024.

CITY OF YAKIMA

By: _____
_____, City Manager

ATTEST:

By: _____
Rosalinda Ibarra
City Clerk

EXECUTED this 10 day of January, 2024.

HEARING EXAMINER PRO TEM

By: 

Andrew Kottkamp