

**RESOLUTION NO. 1395**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON,  
WASHINGTON, AWARDING A PROFESSIONAL SERVICES AGREEMENT FOR  
HEARING EXAMINER SERVICES TO ANDREW KOTTKAMP, ATTORNEY OF LAW**

**WHEREAS**, the City of Dayton received notice that the contracted city hearing examiner was retiring in August 2019; and,

**WHEREAS**, the Director of Planning and Community Development issued an RFP for individuals and firms interested in providing the city with Hearing Examiner services consistent with the Dayton Municipal Code Chapter 1-22; and,

**WHEREAS**, proposals were accepted between July 7 and August 15, 2019; and,

**WHEREAS**, an extension to the deadline was issued following receiving zero Letters of Interest; and,

**WHEREAS**, the City of Dayton received one Letter of Interest during the extended period from Andrew Kottkamp; and,

**WHEREAS**, the Planning Committee reviewed the Letter of Interest and associated submittals and offered support of the candidate through use of a rating scale; and,

**WHEREAS**, the Director of Planning and Community Development coordinated with the candidate to create a draft contract for review; and,

**WHEREAS**, the Planning Committee and City Attorney have reviewed the draft contract with no concerns and/or discussions raised; and,

**WHEREAS**, the candidate is capable and able to perform the duties as required and found within the Dayton Municipal Code.

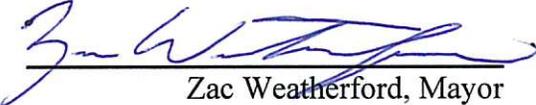
**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAYTON,  
WASHINGTON, DO RESOLVE AS FOLLOWS:**

**Section 1. Bid Award.** The City Council hereby awards the Professional Services Agreement to Andrew Kottkamp, Attorney of Law

**Section 2. Authorization.** The Mayor is hereby authorized to execute a Professional Services Contract with Andrew Kottkamp to perform contractual hearing examiner services as defined within Dayton Municipal Code 1-22 and as defined within the attached contract, adopted by reference as Exhibit A.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF DAYTON, WASHINGTON AT  
A SPECIAL MEETING ON THE 10<sup>TH</sup> DAY OF SEPTEMBER 2019.**

City of Dayton:

  
Zac Weatherford, Mayor

Attested/Authenticated:

  
Trina Cole, City Administrator

**PROFESSIONAL SERVICES AGREEMENT  
FOR HEARING EXAMINER**

This Professional Services Agreement for Hearing Examiner (“Agreement”) is entered into and effective the 16<sup>th</sup> day of October 2019, by and between the City of Dayton (the “City”), a Washington municipal corporation, and Andrew Kottkamp (“Contractor”), sometimes collectively referred to as the “Parties.”

**RECITALS**

WHEREAS, the City has created the position of Hearing Examiner under Chapter 1-22 Dayton Municipal Code (“DMC”); and

WHEREAS, the City seeks the services of a skilled independent contractor capable of working without direct supervision in the capacity of a Hearing Examiner who is experienced in the area of land use law, real property law, enforcement of municipal regulations, city planning and development, and similar permitting issues; and is familiar with the City’s zoning and building codes and other related City codes, ordinances, resolutions, regulations, or policies; and

WHEREAS, Contractor has the requisite skill and experience necessary to provide such services;

NOW, THEREFORE, the Parties agree to the following terms and conditions:

**AGREEMENT**

**1. Services.** Contractor agrees to perform the following professional services for the City, pursuant to the terms and conditions of this Agreement:

- 1.1** Serve as the City Hearing Examiner pursuant to Chapter 1-22 DMC and this Agreement.
- 1.2** Become knowledgeable of all relevant portions of Dayton’s Municipal Code, and related ordinances, regulations, plans, and policies applicable to any matter coming before the Contractor for a hearing. Contractor shall likewise be knowledgeable of all relevant Washington statutes and appellate case law applicable to any matters coming before Contractor for a hearing.
- 1.3** Hear and act, as authorized in Chapter 1-22 DMC, as presently enacted or hereafter amended, and other related City ordinances and regulations. In this regard, Contractor shall receive and examine all available information, conduct public hearings, enter written findings of fact and conclusions of law, and enter decisions. Contractor shall report his or her decisions to the

Director of Planning and Community Development on all matters which may come before the Contractor.

- 1.4 Perform all duties in accordance with all applicable federal and state laws and City ordinances, including but not limited to the current City of Dayton Comprehensive Plan and other related City codes, ordinances, resolutions, standards, or policies, as presently enacted or hereafter amended.
- 1.5 Provide, at Contractor's expense, transportation to and from public hearings in the City, and to and from the sites in the City deemed necessary for viewing.
- 1.6 Provide office and office equipment to the extent deemed necessary by Contractor.
- 1.7 Submit one original report in hard copy format of findings of fact and conclusions of law, and the decision for each case heard. This decision shall be delivered to the Director of Planning and Community Development within the time constraints imposed by law or regulation for each type of hearing held, but in no event later than ten (10) business days following the date the hearing record closes.
- 1.8 Submit an annual report to the City's Planning and Community Development Director detailing all cases heard and decided within the past twelve (12) months, along with any recommendations for improvements to City codes and regulations.

2. **Performance Standard.** Contractor represents and warrants that Contractor has the requisite training, skill, and experience necessary to provide the services contemplated by this Agreement. All duties performed by Contractor shall be performed in a manner consistent with accepted practices for other similar services, including, but not limited to, conducting orderly and impartial hearings, creating a professional and courteous environment for applicants, citizens, and staff, compiling and recording the proceedings in a manner reviewable by a court of law, and preparing findings, conclusions, and decisions which are understandable and based upon sound reasoning and applicable law.

3. **Hearing Examiners Pro-Tem.** In the event of a conflict or disqualification or when, in the discretion of the Contractor, the use of a Hearing Examiner Pro-Tem is required, the Mayor shall appoint, in accordance with DMC Section 1-22.040, a Hearing Examiner Pro-Tem to hear cases.

4. **Responsibilities of the City.** Through its Director of Planning and Community Development, the City shall:

- 4.1 Direct all duties to be performed under this Agreement.
- 4.2 Provide SEPA determinations on all matters heard by the Contractor.
- 4.3 Provide documentation of publication of all legal advertisements and notices required for hearings.
- 4.4 Prepare agendas and scheduling of hearing items.
- 4.5 Provide written staff reports to the Contractor at least ten (10) business days prior to hearings, as well as maps and other exhibits as may be necessary regarding each matter to be heard. The staff reports may include recommended findings of fact and conclusions of law, and a recommended decision, including proposed conditions of approval.
- 4.6 Maintain official files and records of the hearings and forward all required copies of the Contractor's decisions and correspondence to applicants and others requesting copies, as well as perform such other tasks as are necessary to administratively process said materials.
- 4.7 Provide a hearing room, speaking system, tapes and tape recorder, and copies of City ordinances, relevant planning documents, and regulations.

5. **Term.**

- 5.1 **Term.** The initial term of this Agreement shall commence on the 1<sup>st</sup> day of October, 2019, and end on the 31<sup>st</sup> day of December, 2022. From that point thereafter this Agreement shall automatically extend for successive three (3) year terms unless or until it is modified by mutual agreement or otherwise terminated pursuant to this Agreement.

6. **Termination.** This Agreement may be terminated with or without cause by either party, by giving sixty (60) calendar days prior written notice to the other party.

7. **Compensation.**

- 7.1 **Regular Hearing:** The City shall pay Contractor a fee of One Thousand Five Hundred (\$1,500), inclusive of all costs and expenses, including travel, for each matter assigned by the City for a regular hearing. A regular hearing is one in which the time spent by the Hearing Examiner for review of materials in preparation for the hearing, the open record public hearing itself and the review of materials and issuance of a decision, will not exceed four (4) hours of the Hearing Examiner's time.
- 7.2 **Special Hearings:** A special hearing is one in which it is mutually agreed between the parties that the Hearing Examiner's time for review of materials in preparation for the hearing, holding of the open record public hearing and review of materials in preparation of the decision will likely exceed four (4) hours of Hearing Examiner time. The mutual agreement of the parties shall occur prior to the holding of the open record public hearing. In the event it is mutually agreed that the matter is characterized as a special hearing, the Hearing Examiner shall be compensated in the amount of One Thousand Five Hundred Dollars for the first 4 hours and all travel time, and in addition to that, Two Hundred Twenty Five Dollars (\$225) per hour for all time spent, (in addition to the first four hours), in preparation for the hearing, holding the hearing and reviewing materials and rendering of a decision. The City shall notify the Contractor of the possibility of a special hearing situation as soon as practical after such a situation is identified by the City so that the City and the Contractor can discuss and resolve the situation of whether or not a special hearing situation exists.

8. **Method of Payment.** All payments due Contractor shall be made on a monthly basis, thirty (30) business days after receipt and approval of such billing statement by the Mayor, unless notice is given to Contractor that the work performed by Contractor has been found to be unsatisfactory by the Director of Planning and Community Development within twenty (20) business days of receipt of any reports or decisions from Contractor. If Contractor fails to comply with any terms or conditions of this Agreement or to provide, in any manner, the work or services agreed to herein, City may withhold any payment due Contractor until City is satisfied that the corrective action specified by the Community Development Director has been completed. This right is in addition to and not in lieu of the City's right to terminate this Agreement as provided herein or other remedies the City may have under law.

9. **Independent Contractor.** Contractor is, and shall be at all times during the term of this Agreement, an independent contractor and not an employee of the City. The parties fully understand the nature of independent contractor status and intend to create an independent contractor relationship. Contractor, and not the City, shall have the right to control the manner and means by which Contractor's work is accomplished. The City shall retain the right, however, to ensure that the work is being performed according

to agreed-upon standards. Consistent with this relationship, Contractor shall not be covered by any City benefit programs, such as health and welfare benefit plans, sick leave, vacation pay, Social Security, Workers Compensation, unemployment compensation, or any other benefit of employment, and shall not be treated as an employee for federal or state tax purposes or for any other purpose. Contractor shall be responsible for paying all taxes related to payments the City makes to Contractor, including federal income taxes, self-employment (Social Security and Medicaid) taxes, local and state business and occupation taxes, and the City is not responsible for withholding for or paying any of those taxes. Contractor agrees to indemnify and hold the City harmless from any such obligation.

**10. Nonexclusive Contract.** This shall be a nonexclusive contract. It is recognized that Contractor will be performing professional services during the term for other parties and that the City is not the exclusive user of Contractor's services. Contractor agrees not to perform services for others where a conflict of interest, as determined by the City, may exist. City reserves the right to appoint additional Hearing Examiners and to contract for additional services in the future.

**11. Indemnification.**

**11.1 Hearing Examiner Indemnification.** Contractor agrees to indemnify, defend, and hold the City, its elected officials, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions, and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors, or omissions of Contractor, or by Contractor's breach of this Agreement.

**11.2 City Indemnification--Decisions of Hearing Examiner.** Notwithstanding the provisions of Paragraph 11.1 above, the City agrees to indemnify, defend, and hold Contractor harmless from any and all claims, demands, losses, actions, and liabilities (including costs and attorney fees) to or by any and all persons or entities, the basis for which is the decision of the Contractor performed in the normal course of the Contractor's duties as the Hearing Examiner for the City.

**11.3 City Indemnification.** The City agrees to indemnify, defend, and hold Contractor harmless from any and all claims, demands, losses, actions, and liabilities (including costs and attorney fees) to or by any and all persons or entities including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent

caused by the negligent acts, errors, or omissions of the City, its employees, or agents.

**11.4 Survival.** The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

**12. Work Product.** All work product, including records, files, documents, plans, computer disks, magnetic media or material which may be produced or modified by Contractor while performing the services contemplated by this Agreement shall belong to City. At the termination or cancellation of this Agreement, all originals and any copies of any such work product remaining in the possession of Contractor shall be delivered to City.

**13. Entire Agreement.** This Agreement contains all the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no oral or other prior agreements shall be effective for any purpose.

**14. Modification.** No provision of this Agreement may be amended or modified except by written agreement signed by the Parties.

**15. Severability.** Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

**16. No Waiver.** Failure or delay of a Party to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of a Party to declare any breach or default does not act as a waiver of a Party's right to declare another breach or default.

**17. Applicable Law and Venue.** This Agreement shall be interpreted in accordance with the internal laws of the state of Washington. The venue of any action hereunder shall be in the Superior Court for Chelan County, Washington.

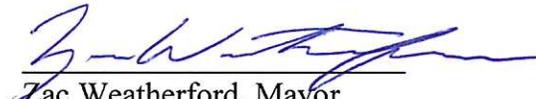
**18. Notices.** Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally to the addresses of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

To City:  
Director of Planning and Community Development  
111 South 1<sup>st</sup> Street  
Dayton, WA 99328

To Contractor:  
Andrew L. Kottkamp  
P.O. Box 1667  
Wenatchee, WA 98807

CITY

CONTRACTOR

By:   
Zac Weatherford, Mayor

By: \_\_\_\_\_  
ANDREW L. KOTTKAMP

Date: October 16, 2019

Date: \_\_\_\_\_

Attest/Authenticated:

By:   
Trina Cole, City Administrator

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FOR HEARING EXAMINER**

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WHEREAS, the City seeks the services of a skilled independent contractor capable of working without direct supervision in the capacity of a Hearing Examiner who is experienced in the area of land use law, real property law, enforcement of municipal regulations, city planning and development, and similar permitting issues; and is familiar with the City’s zoning and building codes and other related City codes, ordinances, resolutions, regulations, or policies; and

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to agreed-upon standards. Consistent with this relationship, Contractor shall not be covered by any City benefit programs, such as health and welfare benefit plans, sick leave, vacation pay, Social Security, Workers Compensation, unemployment compensation, or any other benefit of employment, and shall not be treated as an employee for federal or state tax purposes or for any other purpose. Contractor shall be responsible for paying all taxes related to payments the City makes to Contractor, including federal income taxes, self-employment (Social Security and Medicaid) taxes, local and state business and occupation taxes, and the City is not responsible for withholding for or paying any of those taxes. Contractor agrees to indemnify and hold the City harmless from any such obligation.

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**11.2 City Indemnification--Decisions of Hearing Examiner.** Notwithstanding the provisions of Paragraph 11.1 above, the City agrees to indemnify, defend, and hold Contractor harmless from any and all claims, demands, losses, actions, and liabilities (including costs and attorney fees) to or by any and all persons or entities, the basis for which is the decision of the Contractor performed in the normal course of the Contractor's duties as the Hearing Examiner for the City.

**11.3 City Indemnification.** The City agrees to indemnify, defend, and hold Contractor harmless from any and all claims, demands, losses, actions, and liabilities (including costs and attorney fees) to or by any and all persons or entities including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent

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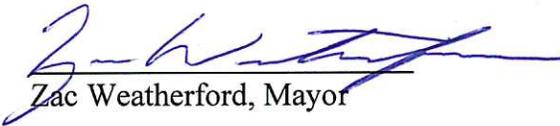
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To City:  
Director of Planning and Community Development  
111 South 1<sup>st</sup> Street  
Dayton, WA 99328

To Contractor:  
Andrew L. Kottkamp  
P.O. Box 1667  
Wenatchee, WA 98807

CITY

CONTRACTOR

By:   
Zac Weatherford, Mayor

By: \_\_\_\_\_  
ANDREW L. KOTTKAMP

Date: October 16, 2019

Date: \_\_\_\_\_

Attest/Authenticated:

By:   
Trina Cole, City Administrator