

Subject: Resolution #684- Re- Appointing City Hearing Examiner and Authorizing Execution of Hearing Examiner Services Agreement with McCarthy & Causseaux, P.S.

Proposed Council Action:

Pass Resolution #684.

Dept. Origin: Mayor's Office
Prepared by: Jennifer Robertson
 City Attorney's Office
For Agenda of: June 5, 2018
Exhibits: Resolution #684 with attached agreement

	Initial & Date
Concurred by Mayor:	_____
Approved/form by City Atty:	<u>JSR5-30-18</u>
Approved by _____ Director:	_____
Approved by Department Head:	_____

INFORMATION / BACKGROUND

The City has created a Hearing Examiner position and adopted a chapter in the Ruston Municipal Code establishing the Office of the Hearing Examiner.¹ In February of 2015, the City Council adopted Resolution #598 appointing Stephen K. Causseaux, Jr. of the firm McCarthy & Causseaux, P.S. and authorized the Mayor to enter into an agreement for such services. The agreement has since expired and the Mayor recommends re-appointing Mr. Causseaux and updating the agreement for services.

The only substantive change between the prior agreement and the updated agreement is that the new agreement does not automatically expire, rather, it can be terminated by either party for any reason upon 30-days' written notice.

FISCAL CONSIDERATION

Authorizing the agreement makes the City responsible for payment of the fees and costs incurred in the providing of Hearing Examiner Services to the City. Bills are to be submitted monthly and are due within 30 days unless disputed. The hourly rates in this agreement are unchanged from the 2015 agreement and are as follows:

Hearing Examiner	\$150.00
Paralegal	\$50.00
Admin/Secretarial	\$35.00
Clerk Services	\$25.00

¹ See Chapter 1.20 RMC.

The City may provide Clerk services or may at its option ask Mr. Causseaux to provide these services.

RECOMMENDATION / MOTION

Pass Resolution #684.

MOTION: I move to approve Resolution #684 re-appointing Stephen K. Causseaux of McCarthy & Causseaux, P.S. as the Ruston Hearing Examiner and authorizing the Mayor to execute the updated Hearing Examiner Services Agreement with McCarthy & Causseaux, P.S. in substantially the form attached to Resolution #684.

RESOLUTION NO. 684

**A RESOLUTION OF THE CITY OF RUSTON,
WASHINGTON, RE-APPOINTING STEPHEN K.
CAUSSEAUX, JR. AS THE RUSTON HEARING EXAMINER
AND AUTHORIZING MAYOR TO EXECUTE A HEARING
EXAMINER SERVICES AGREEMENT WITH McCARTHY
& CAUSSEAUX, P.S. FOR THESE SERVICES.**

WHEREAS, in January 2015, the City Council created the Office of the Hearing Examiner by adoption of Ordinance #1450 which is codified as Chapter 1.20 of the Ruston Municipal Code; and

WHEREAS, in accordance with RMC 1.20.020(A), the City Council is authorized to appoint the City Hearing Examiner; and

WHEREAS, in February of 2015, the City Council adopted Resolution No. 598 appointing Stephen K. Causseaux, Jr. of McCarthy & Causseaux, P.S. and authorized the Mayor to execute an agreement with McCarthy & Causseaux, P.S. for these services; and

WHEREAS, the current contract has expired and the City Council finds that Stephen K. Causseaux, Jr. of McCarthy & Causseaux, P.S. remains qualified and should be re-appointed as the Ruston Hearing Examiner and a new contract executed; and

WHEREAS, the Council finds that it is in the City's best interests to enter into the Agreement for Hearing Examiner Services as attached to this Resolution; **NOW, THEREFORE,**

THE CITY COUNCIL OF THE CITY OF RUSTON HEREBY RESOLVES AS FOLLOWS:

Section 1. Appointment of Hearing Examiner. In accordance with RMC 1.20.020(A), the City Council hereby re-appoints Stephen K. Causseaux, Jr. of McCarthy & Causseaux, P.S. as the City's Hearing Examiner.

Section 2. Authorization of Agreement for Services. The City Council hereby authorizes the Mayor to execute the updated Hearing Examiner Services Agreement with McCarthy & Causseaux, P.S., in substantially the form attached hereto as Exhibit “1.”

PASSED by the City Council of the City of Ruston, signed by the Mayor and attested by the City Clerk in authentication of such passage on this 5th day of June, 2018.

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
RESOLUTION NO.: 684

EXHIBIT “1”

**Hearing Examiner Services Agreement
with
McCarthy & Causseaux, P.S.**

AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF RUSTON
AND McCARTHY & CAUSSEAUX, P.S.

THIS AGREEMENT is made this _ day of June, 2018, between the City of Ruston, (hereinafter the "City") and McCarthy & Causseaux, P.S. (hereinafter "Hearing Examiner").

WHEREAS, Hearing Examiner is in the business of providing certain professional services specified herein; and

WHEREAS, Stephen K. Causseaux, Jr. is the attorney who would serve as the City's Hearing Examiner under this Agreement; and

WHEREAS, the City desires to contract with Hearing Examiner for the provision of such services and Hearing Examiner agrees to contract with the City for same;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed between the parties as follows:

TERMS:

I. Description of Work.

The City of Ruston hereby appoints Stephen K. Causseaux, Jr. of McCarthy & Causseaux P.S. as the City's hearing examiner. The Hearing Examiner's authority is identified in Chapter 1.20 of the Ruston Municipal Code, as well as any code enforcement action where the Hearing Examiner has the specific authority in the Ruston ordinances to hear such actions. The Hearing Examiner shall provide his or her Rules of Practice and Procedure to the City. The Mayor and his designee has the authority of day-to-day administration of this agreement.

II. Payment.

A. The City shall pay Hearing Examiner \$150.00 per hour. The City shall also pay \$35.00 per hour for secretarial/administrative work and \$50.00 per hour for paralegal work. This hourly rate shall constitute compensation for all costs incurred by the Hearing Examiner including travel, secretarial and copying expenses:

B. The City shall provide "clerk" services for the; Examiner, which shall be limited to: duties imposed by the Ruston Ordinances (staff reports, public notice); arranging for the time and date of hearings and other proceedings such as teleconferences and pre-hearing meetings when deemed appropriate by the Hearing Examiner; maintaining the record of a case, and providing the Hearing Examiner with a copy of the record as requested by the Hearing Examiner; collecting and forwarding public comment as provided by code and unless otherwise specified by the Hearing Examiner; and making

a recording of hearings and appeal proceedings. However, at the City's request, the Hearing Examiner will provide Clerk services at the rate of \$25.00 per hour.

C. The Hearing Examiner shall submit monthly payment invoices to the City after such services have been performed. The City shall pay the full amount of the invoice within thirty (30) days of the receipt, unless there is a dispute. In the event of a dispute, the City shall pay the amount not in dispute, and the parties shall resolve the matter pursuant to Section XV herein.

III. Relationship of Parties.

The parties intend that an independent contractor relationship will be created by this Agreement. The Hearing Examiner is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder. No agent, employee, representative or subcontractor of Hearing Examiner shall be or shall be deemed to be the employee, agent, representative or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to the Hearing Examiner or Hearing Examiner's employees, agents, representatives or subcontractors. The Hearing Examiner will be solely and entirely responsible for their acts and for the acts of Hearing Examiner's agents, employees, representatives and subcontractors during the performance of this Agreement.

This Agreement does not create any duty to any third party. No third party beneficiaries are created by this Agreement.

IV. Duration of Agreement.

This Agreement shall be effective for a period commencing from the date of signature by both parties and shall continue in effect until or unless terminated by either party in accordance with Section VI below.

V. Hearing Examiner Pro Tem.

In the event of a conflict or disqualification, scheduling difficulties, or in any situation in which the use of a Hearing Examiner Pro Tem is required, the Hearing Examiner must inform the Planning Director and Mayor of such need. The Hearing Examiner shall inform the Planning Director and Mayor at least one month in advance of any hearing in which the Hearing Examiner Pro Tern is required. The Mayor may decide not to approve the use of an Examiner Pro Tem suggested in this manner, and request that the hearing be rescheduled to a time that would allow the Hearing Examiner's attendance. Alternatively, the Mayor may decide to authorize the use of another Hearing Examiner by separate contract.

VI. Termination.

A. Termination Upon the City's Option. The City shall have the option to terminate this Agreement at any time for any reason or no reason. Termination shall be effective

after thirty (30) days upon delivery of written notice to the Hearing Examiner, except as provided for in subparagraph V.C below.

B. Termination Upon the Hearing Examiner's Option. The Hearing Examiner shall have the option to terminate this Agreement at any time for any reason or no reason after thirty (30) days upon delivery of written notice to the City.

C. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by the Hearing Examiner to the effective date of termination, as described in the final invoice to the City. The Mayor shall make the final determination about what services have been satisfactorily performed, which decision shall be final, binding and conclusive.

D. The City may terminate immediately for good cause, such as a violation of the appearance of fairness doctrine.

VII. Discrimination.

In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Hearing Examiner, its subcontractors or any person acting on behalf of Hearing Examiner shall not, by reason of race, religion, color, sex, national origin or the presence of any sensory, mental, or physical handicap discriminate against any person who is qualified and available to perform the work to which the employment relates.

VIII. Indemnification.

Hearing Examiner hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments 'losses or suits including attorneys' fees, awards or liabilities to any person, including claims by Hearing Examiner's own employees to which Hearing Examiner might otherwise be immune under Title 51 RCW, arising out of or in connection with the Hearing Examiner's negligent performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

In the event of liability for any reason described above which is caused by or results from the concurrent negligence of the Hearing Examiner (and Hearing Examiner' s employees, agents and representatives) and the City (and its officers, officials, employees, agents or representatives), each party's liability shall only be to the extent of its negligence. Such indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

The City's acceptance of any of Hearing Examiner's work when completed shall not be grounds to avoid any of these covenants of indemnification. It is further specifically and expressly understood that the indemnification provided herein constitutes Hearing

Examiner's waiver of immunity under Title 51 RCW, solely for the purposes of indemnification. This waiver has been mutually negotiated by the parties.

IX. Insurance.

A. The Hearing Examiner shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Hearing Examiner, their agents, representatives, employees or subcontractors.

The Examiner's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Examiner to the coverage provided by such insurance, or otherwise to limit the City's recourse to any remedy available at law or in equity.

B. The Hearing Examiner shall maintain the following insurance:

1. Automobile - Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. Such insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. Insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products completed operations aggregate limit. The City shall be named as an insured under the Hearing Examiner's Commercial General Liability insurance policy with respect to the work performed for the City.

3. Professional Liability. Insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Verification of Coverage. Hearing Examiner shall furnish the City with original certificate and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Hearing Examiner before commencement of the work.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

D. Notice of Cancellation. The Hearing Examiner shall provide the City with written notice of any policy cancellation within two (2) business days of their receipt of such notice.

E. Failure to Maintain Insurance. Failure on the part of the Hearing Examiner to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to the Hearing Examiner to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Hearing Examiner from the City.

X. Non-Exclusive Contract.

This shall be a nonexclusive contract. The City reserves the right to appoint additional Hearing Examiners, to contract for additional hearing examiner services in the future, or to terminate this

Agreement as provided herein. Nothing in this Agreement shall be interpreted to prohibit such future appointments. Nothing in this Agreement shall guarantee renewal of this Agreement, its level of payment, nor the level of cases forwarded to the Hearing Examiner in the future, regardless of whether the Hearing Examiner shall be within the term of his appointment. In the event of such future appointments, the City reserves the right to renegotiate any and all provisions of this Agreement for future contract terms.

XI. Modification.

No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Hearing Examiner.

XII. Assignment.

Any assignment of this Agreement by Hearing Examiner without the written consent of the City shall be, void.

XIII. Written Notice.

All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

Notices should be sent to:

Hearing Examiner:

Stephen K. Causseaux, Jr.
McCarthy & Causseaux, P.S.
902 South 10th Street
Tacoma WA 98405
(253) 272-2206

The City of Ruston:

City Clerk
5117 N. Winnifred Street
Ruston, WA 98407
(253) 759-3544

XIV. Non-Waiver of Breach.

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

XV. Resolution of Disputes, Governing Law.

Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the Mayor, whose decision shall be final. Any appeal from the decision of the Mayor shall be to Pierce County superior court. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The canon of construction against the drafter does not apply to this Agreement. Ambiguous terms shall be construed in a manner that is in the public interest.

XVI. Effective Date.

This Agreement may be executed in multiple counterparts, and such counterparts shall collectively constitute the agreement. It is effective on the date of the last signing party. One party's signature alone does not constitute a binding offer on that party.

XVII. Authority to Sign.

By signing this Agreement below, the parties warrant that they have the authority to enter into this Agreement.

XVIII. Severability.

If any portion of this agreement is held invalid, such invalid section or sections shall not affect the remainder of the agreement.

McCARTHY & CAUSSEAU, P.S.

By: Stephen K. Causseaux, Jr.
Its: _____

Date: _____

CITY OF RUSTON

D. Bruce Hopkins, Mayor

Date: _____

XVIII. Severability.

If any portion of this agreement is held invalid, such invalid section or sections shall not affect the remainder of the agreement.

McCARTHY & CAUSSEAUX, P.S.



By: Stephen K. Causseaux, Jr.

Its: President

Date: May 30, 2018

CITY OF RUSTON

D. Bruce Hopkins, Mayor

Date: _____

ATTEST

Judy Grams, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Jennifer Robertson, City Attorney

ATTEST

Judy Grams, City Clerk

APPROVED AS TO FORM:

Office of the City Attorney



Jennifer Robertson, City Attorney