

Subject: Resolution #733 Appointing City Hearing Examiner and Authorizing Execution of Hearing Examiner Services Agreement with Stephen R. Shelton

Dept. Origin: Mayor's Office
Prepared by: Jennifer Robertson
 City Attorney's Office
For Agenda of: October 19, 2021
Exhibits: Resolution #773, attached agreement, letter from prior Hearing Examiner and resume of Mr. Shelton

Proposed Council Action:

Pass Resolution #773.

| | |
|-------------------------------------|--------------------|
| | Initial & Date |
| Concurred by Mayor: | _____ |
| Approved/form by City Atty: | <u>JSR/10-5-21</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 On February 17, 2015 the Council adopted Resolution No. 598 which confirmed Mayor Hopkins' appointment of Stephen K. Causseaux, Jr. of the firm McCarthy & Causseaux, P.S. as the City's Hearing Examiner. Mr. Causseaux has served as Ruston's hearing examiner ever since. In August of this year, Mr. Causseaux informed the City that he would be retiring at the end of 2021 and suggested that the City hire Mr. Stephen R. Shelton as his replacement. In addition to serving as the Ruston Municipal Judge as well as Judge Pro Tem in the past, Mr. Shelton has served as the Pro Tem Examiner to Mr. Causseaux for multiple jurisdictions and is currently serving as the deputy hearing examiner for Pierce County. Mr. Shelton's resume is attached to this agenda bill.

Mayor Hopkins has determined that Mr. Shelton is qualified and should be appointed as the City of Ruston Hearing Examiner. The attached Resolution #773 appoints Mr. Shelton as the City Hearing Examiner and authorizes the Mayor to enter into an agreement for such services. The agreement is attached to Resolution #773.

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 City Clerk will provide support to the Hearing

¹ See Chapter 1.20 RMC.

Examiner, so there will be no additional administrative fees beyond the Hearing Examiner's hourly rate. The hourly rate in this agreement is \$150.00 per hour for the Hearing Examiner.

RECOMMENDATION / MOTION

Pass Resolution #773.

MOTION: I move to approve Resolution #773 appointing Stephen R. Shelton as the Ruston Hearing Examiner and authorizing the Mayor to execute the Hearing Examiner Services Agreement with Mr. Shelton in substantially the form attached to Resolution #773.

RESOLUTION NO. 773

**A RESOLUTION OF THE CITY OF RUSTON,
WASHINGTON, APPOINTING STEPHEN R. SHELTON AS
THE RUSTON HEARING EXAMINER AND
AUTHORIZING MAYOR TO EXECUTE A HEARING
EXAMINER SERVICES AGREEMENT WITH STEPHEN R.
SHELTON 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, the City Council finds that Stephen R. Shelton is qualified and should be appointed as the Ruston Hearing Examiner; and

WHEREAS, to establish the terms of services of the City Hearing Examiner, an agreement for services is needed; 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 appoints Stephen R. Shelton as the City's Hearing Examiner.

Section 2. Authorization of Agreement for Services. The City Council hereby authorizes the Mayor to execute the Hearing Examiner Services Agreement Stephen R. Shelton 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 19th day of October, 2021.

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
RESOLUTION NO.: 773

EXHIBIT “1”

**Hearing Examiner Services Agreement
with
Stephen R. Shelton**

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN THE CITY OF RUSTON

AND STEPHEN R. SHELTON

THIS AGREEMENT is made this ____ day of October, 2021, between the City of Ruston, (hereinafter the "City") and Stephen R. Shelton (hereinafter "Hearing Examiner").

WHEREAS, Stephen R. Shelton is a licensed attorney and former judge who is willing to serve as the City's Hearing Examiner under this Agreement; and

WHEREAS, Hearing Examiner is in the business of providing certain professional services specified herein; 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 R. Shelton 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. 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 Hearing 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; specifically, the clerk will act as the hearing clerk, will distribute final decisions to parties of record, which the

Hearing Examiner will issue electronically, by email and US mail and will prepare the administrative record when decisions are appealed.

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 Tem 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 \$500,000.00 per accident.

2. 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 R. Shelton
1030 Fairway Drive
Fircrest WA 98466
(253) 229-3789
Email: shelt1@nventure.com

The City of Ruston:

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

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.

STEPHEN R. SHELTON



Stephen R. Shelton

Date: 10-8-21

CITY OF RUSTON

D. Bruce Hopkins, Mayor

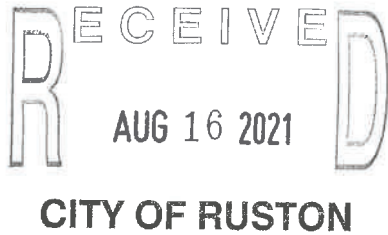
Date: _____

ATTEST

Judy Grams, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Jennifer Robertson, City Attorney



August 12, 2021

902 South 10th Street
Tacoma, WA 98405

p: 253 272 2206
f: 253 272 6439

City of Ruston
Attn: Rob White
5117 North Winnifred Street
Ruston, WA 98407

Dear Rob,

It has been an honor and privilege to have served as the City of Ruston Hearing Examiner since my appointment in 2015. I have thoroughly enjoyed working with you and your staff and sincerely appreciate the opportunity to serve Ruston.

I have decided to retire from the practice of law effective December 31, 2021. In accordance with our contract I am providing you written notice that I will not be extending the contract beyond said date. Furthermore, due to the time necessary to prepare decisions and to address requests for reconsideration it is not wise for me to hear any cases after Thanksgiving. I should probably not preside at any complex, lengthy hearings subsequent to November 1. If the City desires, or has the opportunity to engage a new Examiner prior to November 1, I am more than willing to retire early and assist in the transition to a new Examiner.

I would recommend that the City consider contracting with Mr. Stephen R. Shelton for Hearing Examiner services and have taken the liberty of enclosing a copy of his resume'. Mr. Shelton has worked for me over the past year as a Pro Tem Examiner for multiple jurisdictions, and I have complete confidence in his ability to serve the City well.

Once again, thank you so much for the opportunity to serve as Ruston's Examiner.

Very truly yours,



Stephen K. Causseaux, Jr.

JUDGE STEPHEN R. SHELTON (RET.)

shelt1@nventure.com

(253) 229-3789

Current Areas of Practice

| | |
|-------------------------|--|
| Deputy Hearing Examiner | Pierce County |
| Judge Pro Tem | Pierce County District/Tacoma Municipal Courts |
| Of Counsel | Stuart E. Shelton Injury Law |
| Wedding Officiant | State of Washington |

Education

| | |
|----------------------------------|-------------------------------------|
| University of Washington | BA 1973 |
| University of Washington | Secondary Teaching Certificate 1976 |
| Seattle University School of Law | J.D. 1981 |

Legal Experience

| | | |
|-----------------------------|--|-----------|
| Judge Pro Tem | Town of Ruston Municipal Court | 2013-2018 |
| Judge Pro Tem | Pierce County District Court | 2013-2015 |
| Judge | City of Puyallup Municipal Court | 1994-2012 |
| Judge | City of Sumner Municipal Court | 2002-2008 |
| Judge | Town of Ruston Municipal Court | 1996-2002 |
| Pro Tem Commissioner | Pierce County District/Superior Courts | 1994-2005 |
| Deputy Hearing Examiner | Pierce County | 1996-1999 |
| City Attorney | City of Auburn | 1990-1993 |
| Deputy Prosecuting Attorney | Pierce County | 1983-1990 |

Community Experience

| | | |
|----------------------|-------------------------------------|-----------|
| Ambassador Committee | Greater Tacoma Community Foundation | 2018-2021 |
| Teacher | SAMI HS TSD #10 | 2014 |
| Mayor | City of Fircrest, WA | 1992-1993 |
| Councilmember | City of Fircrest, WA | 1988-1993 |
| Teacher | Jason Lee MS TSD #10 | 1981-1982 |

Professional History

Washington State District and Municipal Court Judges' Association

| | |
|-----------|--|
| 2010-2011 | Chair - Diversity Committee |
| | Peer Counselor - Judicial Assistance Committee |
| 2008-2009 | Past President |
| | Board Liaison to WSBA Board of Governors |
| | Chair - Diversity Committee |
| | Chair - Nominating Committee |
| | Peer Counselor - Judicial Assistance Committee |
| 2007-2008 | President |
| 2006-2007 | President-Elect |
| 2005-2006 | Vice-President |
| | Chair - Long Range Planning Committee |
| 2004-2005 | Secretary-Treasurer |
| 1999-2002 | Board member |
| 1998-1999 | Municipal Court Task Force |
| 1995-1997 | Legislative Committee |

Washington State Board of Judicial Administration

| | |
|-----------|--------|
| 2006-2008 | Member |
|-----------|--------|

Washington State Judicial College

| | |
|-----------|---------|
| 2007-2010 | Faculty |
|-----------|---------|

Washington State Pro Tem Judge Training Program

| | |
|-----------|-------------------|
| 2010-2012 | Faculty/Moderator |
|-----------|-------------------|



CITY OF RUSTON