



REQUEST FOR COUNCIL ACTION

Agenda Bill No.: 25-016

Meeting Date: March 24, 2025

Subject: Resolution 2025-13 Accepting Agreement with Rio Foltz, PLLC for Hearing Examiner Services

Attachments: Resolution 2025-13 Approving and Authorizing Agreement with Rio Foltz, PLLC

Presented by: Andrew Hattori, Community & Economic Development Director

Approved For Agenda By: Dan Ford, City Manager

Discussion:

The City of Toppenish utilizes the a Hearing Examiner process to facilitate certain applications and items including but not limited to:

- Special Property Uses
- Rezones
- Right-of-Way Vacations
- Appeals
- Civil Violation Hearings

However, in late 2024, our previous Hearing Examiner left the role to become the City Attorney. Since this occurred the City has not filled the vacancy. While this has not created any issues as there has not been any applications or appeals necessitating a hearing by the Hearing Examiner, the City needs to enter into a contract for these services should an application be received.

With this in mind, staff is proposing to enter into an agreement with Rio Foltz, PLLC for Hearing Examiner services at an hourly rate of \$200.00.

Fiscal Impact: The City of Toppenish will be required to pay for Hearing Examiner services as needed.

Recommendation: Approve Resolution 2025-13, authorizing the City Manager to enter into an agreement with Rio Foltz, PLLC, for Hearing Examiner services.

RESOLUTION 2025-13

**A RESOLUTION OF THE CITY OF TOPPENISH,
WASHINGTON, APPROVING AND AUTHORIZING
EXECUTION OF AN AGREEMENT WITH RIO FOLTZ,
PLLC, FOR HEARING EXAMINER SERVICES.**

WHEREAS, the City of Toppenish (hereinafter the "City") is in periodic need of hearing examiner services for code enforcement cases and other cases as set forth in the Toppenish Municipal Code; and

WHEREAS, the City wishes to engage the law firm of Rio Foltz, PLLC, to provide hearing examiner services, based upon the experience and history of the firm in providing such services.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY TOPPENISH,
WASHINGTON, HEREBY RESOLVES as follows:**

That the City Council of the City of Toppenish, Washington approves the Agreement for Hearing Examiner Services in substantial conformity with the Agreement attached hereto, marked as **Exhibit A** and incorporated herein by this reference, between the City and Rio Foltz, PLLC, and the Mayor and the City Manager are authorized to execute said Agreement on behalf of the City.

IT IS FURTHER RESOLVED, that the City Manager is authorized to execute such other and further documents, and take such other steps as are consistent with and necessary to effect and implement the purposes hereof.

This Resolution shall be effective immediately upon passage and signatures hereto.

PASSED by the Toppenish City Council at its regular meeting held on the ____ day of _____, 2025.

ELPIDIA SAAVEDRA, Mayor

ATTEST:

HEIDI RIOJAS, CMC, City Clerk

APPROVED AS TO FORM:

DANIEL B. HEID, City Attorney

HEARING EXAMINER AGREEMENT BETWEEN THE CITY OF TOPPENISH AND RIO FOLTZ, PLLC

THIS AGREEMENT, entered into this _____ day of _____, 2025, by and between the City of Toppenish, Washington, a Municipal Corporation, hereinafter referred to as "City" and the Law Firm of Rio Foltz, PLLC, hereinafter referred to as "Hearing Examiner."

WHEREAS, there is a need to have Hearing Examiner Services for appropriate cases under the Toppenish Municipal Code; and

WHEREAS, the City Manager has appointed, the City Council has confirmed, and the City wishes to contract with the Hearing Examiner under the terms and conditions set forth herein.

IN CONSIDERATION of the mutual benefits to be derived by the parties herein, the parties agree as follows:

1. Scope of Services

The Hearing Examiner warrants that the Hearing Examiner is duly licensed to practice law in the State of Washington, and which maintains in full force a law firm composed of attorneys and effect Professional Liability (malpractice) insurance. The Hearing Examiner through one of the attorneys in the law firm shall perform all of the duties set forth in Chapter 2.50 of the Toppenish Municipal Code and all other actions reasonably necessary to fulfill the obligations of the position, as established by State Statute or City Ordinance. The provisions of RCW 35A.63.170 are incorporated by this reference as if fully set forth herein.

2. Compensation

The Hearing Examiner shall provide services to the City at an hourly rate of two hundred Dollars (\$200.00) for performance of the duties described herein, including any case law research or opinion writing, and for time spent travelling to and from City Hall to residence/office in Tri-Cities, for purposes of performing the official duties described herein.

3. Term

This Agreement shall be effective upon execution and continue for a period of one (1) year and automatically be renewed annually thereafter unless thirty (30) days written notice of nonrenewal is given by United States mail to the other party at the address set forth herein. In the event this Agreement is terminated, Hearing Examiner's final invoice shall be paid on the regular scheduled payment date.

4. Billing and Payment

Hearing Examiner shall submit an invoice to City within thirty (30) days after the decision is rendered on an application or administrative appeal. The City shall make payments to the

Hearing Examiner , which payment shall be considered by the City Council at the regular end-of-the-month voucher meeting following receipt of the Hearing Examiner's invoice.

5. Ownership of Work Product

Any and all documents, drawings, reports and other work product produced by the Hearing Examiner under this Agreement shall become the property of the City upon payment of the Hearing Examiner's fees and charges therefore. The City shall have the complete right to use and reuse such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Hearing Examiner.

6. Records

Hearing Examiner shall keep all records related to this Agreement for a period of three (3) years following completion of the work for which the Hearing Examiner is retained. The Hearing Examiner shall return the City's original records to the City. The Hearing Examiner shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Hearing Examiner. Upon request, the Hearing Examiner will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Hearing Examiner, but the Hearing Examiner may charge the City for copies requested for any other purpose.

7. Independent Contractor

Hearing Examiner is an independent contractor appointed by the City for the performance of services under this Agreement. The City shall not be liable for, nor obligated to pay to the Hearing Examiner, or any employee of the Hearing Examiner, sick leave, vacation pay, overtime or any other benefit applicable to employees of the City, nor to pay or deduct any social security, income tax, or other tax from the payments made to the Hearing Examiner which may arise as an incident of the Hearing Examiner performing services for the City. The City shall not be obligated to pay industrial insurance for the services rendered by the Hearing Examiner.

8. Taxes

Hearing Examiner will be solely responsible for the payment of any and all applicable taxes related to the services provided under this Agreement and if such taxes are required to be passed through to the City by law, the same shall be duly itemized on any billings submitted to the City by the Hearing Examiner.

9. Assignment

Hearing Examiner shall not assign any of the services covered by this Agreement without the express written consent of the City.

10. Integration

The written provisions and terms of this Agreement shall supersede all prior verbal statements of any officer or representative of the City, or any prior agreements between the parties, and such statement or prior agreements shall not be effective or be construed as entering into, forming a part of, or altering this Agreement in any way.

11. Notices and Communications

Notice given pursuant to this Agreement shall be given in writing to the parties as follows:

City:	City of Toppenish 21 West 1 st Avenue Toppenish, WA 98948 (509) 865-2080 dan.ford@cityoftoppenish.us
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Hearing Examiner:	Rio Foltz, PLLC 530 West Kennewick Avenue Kennewick, WA 99336 (509) 628-4742 natalie@riofoltz.com
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12. Termination

This Agreement may be terminated by the City or the Hearing Examiner for any reason upon thirty (30) days written notice. Any such notice shall be given by the terminating party to the other party at the address specified herein. In the event of termination, the City shall pay for all services satisfactorily performed by the Hearing Examiner to the effective date of termination, as described in the Hearing Examiner's final report submitted to the City. No payment shall be made for any work completed after the termination date. In the event that services of the Hearing Examiner are terminated by the City for fault on part of the Hearing Examiner, the amount to be paid shall be determined by the City with consideration given to the actual costs incurred by the Hearing Examiner in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost to the City of employing another individual to complete the work required, and the time which may be required to do so. Upon termination, the City may take possession of all records and documents in the Hearing Examiner's possession pertaining to or arising out of the Hearing Examiner's duties under this Agreement.

13. General Provisions

For the purpose of this Agreement, time is of the essence. In the event of any dispute between the City and the Hearing Examiner concerning the enforcement, breach, or interpretation of this Agreement resolution shall be made by presentation to the Mayor of Toppenish the dispute for a cooperative resolution between the parties. However, if unresolved, the matter shall be submitted to binding arbitration in Kennewick, Washington, by a mutually agreed arbitrator or

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one selected by Benton County Superior Court pursuant to RCW 7.04A, the Mandatory Rules of Arbitration (MAR). Venue shall be placed in Benton County, Washington, and the prevailing parties shall be awarded attorney fees and costs.

14. Waiver

The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed to be a waiver or relinquishment of said Agreement provision, and the same shall remain in full force and effect.

15. Severability

In the event that any provision of this Agreement shall be determined by a Court of competent jurisdiction to be invalid, the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

CITY OF TOPPENISH:

HEARING EXAMINER:

Rio Foltz, PLLC

By: _____
Elpidia Saavedra, Mayor

By: _____

Attest:

Heidi Riojas, CMC, City Clerk

Approved:

Daniel Ford
City Manager

Approved as to Form:

Daniel B. Heid
City Attorney