

RESOLUTION 2013 - 32



**A RESOLUTION OF THE CITY OF SUNNYSIDE,
WASHINGTON, AUTHORIZING THE INTERIM CITY MANAGER
TO SIGN THE EMPLOYMENT AGREEMENT BETWEEN THE
CITY OF SUNNYSIDE AND DAVID A. LAYDEN**

WHEREAS, the has been without a finance director for six weeks; and

WHEREAS, services of an interim finance director are critical to assisting the interim city manager and City Council with its fiduciary responsibilities; and

WHEREAS, David A. Layden, has significant Finance Director experience and is otherwise qualified to provide Finance Director services on an interim basis to assist the City through this transition period; and

WHEREAS, the interim city manager has reviewed the Employment Agreement for Finance Director's services and determined entering into the Agreement to be in the best interest of the citizens of the City of Sunnyside.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, as follows:

SECTION 1. That the Inteirm City Manager of the City of Sunnyside, Washington, is hereby authorized and directed to sign the original Employment Agreement between the City of Sunnyside, Washington, and David A. Layden, a copy of which is attached hereto and incorporated herein by this reference as Exhibit "A"; and to take all necessary steps required for the implementation of this Agreement.

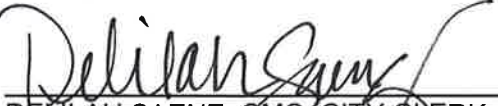
SECTION 2. This Resolution shall be effective upon passage, approval and signatures hereon as required by law.

PASSED this 8th day of April, 2013.



JAMES A. RESTUCCI, MAYOR

ATTEST:



DELILAH SAENZ, CMC, CITY CLERK

APPROVED AS TO FORM:



KERR LAW GROUP, LLP
Attorneys for the City of Sunnyside

EXHIBIT "A"

**EMPLOYMENT AGREEMENT FOR
INTERIM FINANCE DIRECTOR**

THIS AGREEMENT is made this _____ day of _____, 2013, between the City of Sunnyside, Washington (hereinafter referred to as "City"); and David A. Layden (hereinafter referred to as "Employee").

WHEREAS, the City is currently without a Finance Director and anticipates that recruiting a new Finance Director will take four to five months; and

WHEREAS, the City desires to hire an Interim Finance Director to serve in that capacity during this period of transition; and

WHEREAS, the Employee has been identified as an individual with significant experience and the requisite qualifications to serve as Interim Finance Director and the Employee is willing to accept the position recognizing that the employment is "at-will" and intended to be for a short term basis only.

NOW, THEREFORE, in consideration for the mutual covenants contained herein and for good and valuable consideration, the City hereby employs the employee and the employee agrees to perform services as an Employee of the City on an "at-will" basis, upon the following terms and conditions:

1. **Appointment.** The Employee is hereby employed by the City to render the services commonly associated with the position of City Finance Director and such other services as may be assigned by the City Manager. The City may, in its sole discretion, increase or reduce the duties, or modify the title and job description, of the Employee from time to time, and any such increase, reduction, or modification should not be deemed the termination of this Agreement.

2. **Acceptance of Employment.** Employee accepts employment with the City upon the terms set forth above and agrees to devote all Employee's time, energy and ability to the interest of the City, and to perform Employee's duties in an efficient, trustworthy, and business-like manner consistent with the requirements of State law and Generally Accepted Practices for Municipal Finance Directors in the State of Washington.

3. **Background Check.** The Employee hereby authorizes the City to perform all such background checks it deems necessary and hereby authorizes and releases to the City prior employment history and criminal history. This authorization and release shall not be deemed to allow the City to access the Employee's private health information.

4. **City Property.** Employee acknowledges and agrees that while employed by the City, the Employee may be provided with use of computer equipment and other property of the City. The use and possession of such items shall be subject to any policies, requirements or

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restrictions established by the City. Such items may only be used in the performance of the Employee's duties for the City. On request of the City, the Employee shall immediately deliver any such items to the City. Upon termination of employment, Employee shall have the affirmative duty to return any such item to the City whether a request is made or not. The obligation to return City property shall extend to and include any and all work product.

5. **Compensation.** The City shall pay the Employee hourly compensation at the rate of Fifty-Six and 25/100 Dollars (\$56.25) per hour. The Employee shall be considered an exempt, full time employee, and shall not be entitled to payment of overtime.

6. **Benefits.** Standard benefits that are provided to other exempt full-time employees have been offered to the Employee, and the Employee has specifically negotiated for employment without such benefits in order to maintain the Employee's outside benefits associated with the Employee's previous retirement. Employee understands and agrees that the Employee is entitled only to compensation listed in Section 5 above. Employee specifically waives any and all claims to receive health, disability, vacation and retirement benefits, including the right to sue for such compensation. Employee specifically waives any claim for discrimination under State or Federal law, and any other claim under Title 49 RCW, or other State or Federal law, that may otherwise arise out of this Section.

7. **Withholding.** All sums payable to Employee under this Agreement shall be reduced by all Federal, State, local and other withholdings and similar taxes and payments required by applicable law.

8. **Term of Agreement.** There shall be no guaranteed term of employment. Employee acknowledges and agrees that Employee shall be an "at-will" employee, and the Employee's employment may be terminated at any time by the City, with or without cause. Notwithstanding the "at-will" nature of employment, the Employee shall be entitled to thirty (30) days notice prior to termination of this Agreement. This benefit is not intended to change the "at-will" status of the Employee and is specifically given in exchange for a mutual requirement of the Employee to provide the City with thirty (30) days notice prior to termination of this Agreement. The parties agree and recognize that the position of Interim Finance Director is a position of high trust and authority within the City, and that during the term of employment, the Employee will gain substantial institutional knowledge necessary for administration of the City's affairs. To that end, Employee agrees that upon notice of termination of this Agreement, the Employee shall use best efforts to assist in the transfer of such knowledge and training of other City staff as directed by the City Manager.

9. **Notice.** Any notice required hereunder shall be delivered or mailed to the following parties at the following addresses:

City of Sunnyside
Attn: City Manager
818 East Edison Avenue

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Sunnyside WA 98944

Interim Finance Director
Attn: David A. Layden
5809 65th Avenue West
University Place, WA 98467

10. Indemnification. To the extent the Employee is acting within the scope of employment under this Agreement and is otherwise taking action on behalf of the City in good faith, the City agrees to indemnify and defend the Employee from any claim arising out of said actions taken and work performed under this Agreement.

11. General Provisions. For the purpose of this Agreement, time is of the essence. In the event of a dispute regarding the enforcement, breach, default or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the parties, said dispute shall be resolved by arbitration pursuant to RCW 7.04A, as amended, with both parties waiving the right of a jury trial upon trial de novo; and with venue being placed in Yakima County, Washington. The parties shall bear their own costs and attorney fees.

In the event any provision of this Agreement is deemed to be unenforceable, the other provisions of the Agreement shall remain in full force and effect.

Failure of the City to enforce any terms or provisions of this Agreement shall not be deemed a waiver of said terms or provisions. Waiver of any provision of this Agreement by the City shall only be made in writing. Any such waiver shall be specific only to the provision so listed, and shall not constitute a waiver of any other provision of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first written above.

CITY OF SUNNYSIDE

EMPLOYEE

By: _____
John C. Darrington
Interim City Manager

By: _____
David A. Layden

Attest:

Delilah Saenz, CMC
City Clerk