

RESOLUTION 2013 - 103



**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, APPROVING
AN AGREEMENT FOR INTERIM
PROSECUTING ATTORNEY SERVICES
(Kenneth Raber)**

WHEREAS, the City of Sunnyside is in need of legal representation for the purposes of prosecution services, all as outlined in the Prosecution Services Agreement and attached hereto as Exhibit "A"; and

WHEREAS, Kenneth Raber is qualified to provide such services and has negotiated an agreement for the provision of interim prosecuting attorney services; and

WHEREAS, the City Council finds and determines that approval of such agreement is in the best interests of residents of the City of Sunnyside and will promote the general health, safety and welfare.

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

SECTION 1. That the "Prosecution Services Agreement," a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, by and between the City of Sunnyside and Kenneth Raber, is hereby approved; and the City Manager is hereby authorized to execute such agreement for and on behalf of the City of Sunnyside.

SECTION 2. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 12th day of August, 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"

PROSECUTION SERVICES AGREEMENT

THIS AGREEMENT is entered into by and between the CITY OF SUNNYSIDE, a Washington municipal corporation (“*City*”), and KENNETH RABER (“*Prosecutor*”).

RECITALS

WHEREAS, the *City* operates a municipal court system and provides prosecution services therein, and

WHEREAS, the *City's* prosecution services provider is currently unable to provide prosecution services pending review by the *City* of criminal charges against said provider, and

WHEREAS, the *Prosecutor* was able to step-in and provide prosecution services on an interim basis for the *City*, and

WHEREAS, the *City* and *Prosecutor* have met and agreed upon specific terms relating to the ongoing provision of interim prosecution services in the *City*.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties do agree as follows:

1. *Prosecutor's Responsibilities.*

(a) Provide complete municipal, misdemeanor, gross misdemeanor, and civil infraction prosecution for all cases filed in the Sunnyside Municipal Court, and other related services, including: (1) Arraignment Docket representation; (2) Incarceration Docket representation; (3) Negotiation of sentences and forfeiture orders of the Court; (4) Bench trials and hearings; (5) Pretrial hearings; (6) Jury trials and Trial Readiness hearings; (7) Post-trial motions and hearings; (8) Appeals; (9) Police Department day-to-day counsel and training as needed; (10) Response to criminal prosecution related questions from the public and media that cannot be answered by *City* administrative staff.

(b) Employ such staff as necessary to assist with correspondence, document preparation, and file management consistent with the foregoing duties.

(c) Be prompt in attendance for all required dockets, hearings, and trials as outlined on the attached Exhibit A, Sunnyside Municipal Court Prosecutor Schedule. Such Schedule may be changed from time to time to meet the needs of the court upon mutual agreement of the parties.

(d) *Prosecutor* shall provide periodic reports to the City Manager, or his designee as requested. *Prosecutor* shall submit to performance evaluations and cooperate with the *City* in responding to complaints about the conduct of the *Prosecutor* and the provision of prosecution services in the *City*.

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(e) *Prosecutor* shall utilize the services of qualified attorneys to provide Substitute and Conflict counsel, and ensure coverage of all dockets, hearings, trials, and other necessary appearances. *Prosecutor* shall pay substitute counsel directly and shall not be entitled to any additional compensation under this Agreement, nor shall substitute counsel have claim against the *City* for any additional compensation. Conflict counsel shall be paid directly by the *City* as provided in Section 2(c) below. Quinn Dalan is approved as an additional prosecutor to provide services under this Agreement. Before utilizing the services of other qualified prosecutors to assist with this Agreement, *Prosecutor* shall obtain the *City's* written consent.

(f) Work proactively with the municipal court to implement practices and procedures and recommend changes necessary to comply with changes in the law and maintain and improve efficient and effective prosecution services in the *City*.

(g) *Prosecutor* shall satisfy the minimum requirements for practicing law in the State of Washington, including regular completion of required continuing legal education. *Prosecutor* shall immediately notify the *City* in the event *Prosecutor* is unable or unavailable to fulfill the terms of this Agreement. *Prosecutor* shall not engage in conduct that would reflect negatively upon the *City* or otherwise diminish the public's trust in the *Prosecutor's* ability to perform services under this Agreement.

(h) *Prosecutor* shall provide legal services on any and all appeals to the Superior Court arising out of cases covered by this agreement. *Prosecutor* shall be paid \$750 for each appealed case.

2. City's Responsibilities.

(a) *City* shall provide a computer for the *Prosecutor* in the courtroom. *City* shall provide conference space for the *Prosecutor* to conduct witness interviews.

(b) *City* shall pay all costs for subpoenas, service of process, and required reports.

(c) *City* shall pay the *Prosecutor* the sum of Six Thousand One Hundred Twenty-Five Dollars and No Cents (\$6,125.00) per month. Payment shall be due on or before the 10th day following each calendar month. Payment shall be prorated for any partial month. Additionally, *City* shall pay conflict counsel a rate of \$90.00 per hour. The *City* shall have the right to require *Prosecutor* to provide adequate documentation of any such conflict. The city shall be entitled to offset any conflict counsel payments in excess of \$2,500 in any given month against the *Prosecutor's* monthly payment.

3. Term. The term of this Agreement shall be retroactive to July 1, 2013 so the *Prosecutor* may receive a prorated payment for those days of services in the month of July, and the Agreement shall continue thereafter automatically renewing each month on a monthly basis until such time as either party provides thirty (30) days written notice of termination.

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4. Independent Contractor Relationship. *Prosecutor* is an independent contractor in performance of services under this Agreement, and he shall be responsible for payment of all federal, state, and local taxes arising out of said services under this Agreement. *Prosecutor* shall comply with all state and federal laws, including but not limited to RCW 50.04.140 and RCW 51.08.195.

5. Insurance and Indemnification. In consideration of the specific promises made in this Section, *City* agrees to waive its usual requirement of Errors and Omissions Insurance. This provision shall be construed broadly in favor of the *City*. *Prosecutor* agrees to defend, indemnify, and hold the *City*, its officers, employees, agents, elected officials, and assigns harmless from any and all liability, claims, damages, losses, costs, or expenses, whether to persons or property, including any costs, expenses, or attorney's fees associated with any claims which the *City* may incur by reason of any act, neglect, omission, error, or fault on the part of the *Prosecutor* in performance of this Agreement, and in the course of any action alleged by any claimant to have been carried out on behalf of the *City*. The duty to defend, indemnify, and hold the *City* harmless shall extend to any claim associated with any substitute or conflict counsel performing services under this Agreement. This section shall survive termination of this Agreement.

6. Notice. All notices or other written communications required or permitted under this Agreement must be in writing and will be deemed to have been properly given (i) upon delivery, if delivered in person, or (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to *City*: City of Sunnyside
 818 E. Edison
 Sunnyside, WA 98944

If to *Prosecutor*: Kenneth Raber

_____, WA _____

7. General Provisions.

7.1 Waiver. Failure to enforce any provision of this Agreement shall not constitute a waiver.

7.2 Dispute Resolution. In the event of any dispute regarding enforcement, breach, default, or interpretation of this Agreement, the parties shall first meet in a good faith attempt 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

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parties waiving the right of a jury trial upon trial de novo, with venue placed in Yakima County, Washington. The substantially prevailing party shall be entitled to its reasonable attorney fees and costs as additional award and judgment against the other.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth opposite their respective signatures.

CITY OF SUNNYSIDE, a Washington
Municipal Corporation

Date: _____

By: _____
Donald D. Day, City Manager

PROSECUTOR:

Date: _____

By: 
Kenneth Raber

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Sunnyside Municipal Court Prosecutor Schedule

Monday	11:00 am	In-custody arraignments (arrests over the weekend)
Tuesday	10:30 am	Arraignments, until finished
	1:30 pm	Pre-trial and contested hearings, until finished
Thursday	9:00 am	Pre-trial contested and pre-trial hearings, until finished
	1:00 pm	Jury trials, if not settled