



**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF SUNNYSIDE, WASHINGTON,
AUTHORIZING THE CITY MANAGER TO ENTER INTO
AN AGREEMENT FOR MUNICIPAL COURT JUDGE SERVICES
WITH STEVEN L. MICHELS**

WHEREAS, the City of Sunnyside is responsible for the operations of the municipal court to hear matters properly assigned to the municipal court under Washington State law or Sunnyside Municipal Code; and

WHEREAS, Judge Steven L. Michels has served as the sole judge from the day the Sunnyside Municipal Court started operation in 1986; and

WHEREAS, the City and Judge Steven L. Michels have negotiated a new Agreement for Municipal Court Judge 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 Agreement for Municipal Court Judge Services with Steven L. Michels, attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby approved; and the City Manager is hereby authorized to execute and administer 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 14th day of July, 2014.



JAMES A. RESTUCCI, MAYOR

ATTEST:



DELILAH SAENZ, CMC, CITY CLERK

APPROVED AS TO FORM:

A handwritten signature in blue ink, consisting of a series of loops and flourishes, positioned above a horizontal line.

KERR LAW GROUP, PLLC
Attorneys for the City of Sunnyside

AGREEMENT FOR MUNICIPAL COURT JUDGE SERVICES

**By and Between
CITY OF SUNNYSIDE
And
STEVEN L. MICHELS**

THIS AGREEMENT is entered into by and between the City of Sunnyside, Washington, a Municipal Corporation, hereinafter referred to as "City," and STEVEN L. MICHELS, Attorney-at-Law, hereinafter referred to as "Judge," for the purpose of providing Municipal Court Judge Services for the City of Sunnyside Municipal Court.

WHEREAS, the City has established by Ordinance a Municipal Court as authorized by Chapter 3.50 the Revised Code of Washington, having jurisdiction to exercise all powers vested in Municipal Courts, together with such other powers and jurisdiction as are generally conferred upon such Courts in the State of Washington, either by common law or by express statute or Ordinance; and

WHEREAS, the Judge, appointed by the city Manager and confirmed by the City council will be responsible for the performance of judicial services for the Sunnyside Municipal Court: and

WHEREAS, the federal and state constitutions establish three independent branches of government: executive, legislative, and judicial. Checks and balances among the branches of government are facilitated through coordination and communication, and all three branches participate in the responsibility to ensure efficient and effective functioning of the judicial system; NOW, THEREFORE,

IN CONSIDERATION of the mutual covenants contained herein, the parties agree as follows:

1. Professional Requirements

The Judge shall be an attorney admitted to practice law before the courts of record for the state of Washington. The Judge shall report to the City any change affecting the maintenance of membership in good standing with the Washington State Bar Association.

The Judge will keep current on legal issues relevant to the Municipal Court through attendance at required continuing legal and judicial education programs emphasizing such matters.

The Judge shall comply with the Code of Judicial Conduct and be subject to ethics laws applicable to his office. The Judge is responsible for ensuring that staff and court officials subject to their direction and control comply with applicable provisions of the Code of Judicial Conduct, court rules and statutes.

The Judge agrees during the term of this Agreement not to participate in any matter in which the Judge participated personally and substantially as a Judge, public officer or employee, including (1) as a lawyer in any case adverse to the City or its Police Department and (2) as a defense attorney or prosecuting attorney in the Municipal Court.

2. Duties.

A. Court Administration. The Judge shall at all times faithfully, and to the best of his ability, administer activities of the court, direct its employees, hear and assign all cases in a timely manner and all other actions reasonably necessary to establish and fulfill obligations of the Municipal Court as established by state or local law, rule, statute, regulation or City ordinance. The Parties hereto shall both make best efforts to work together to achieve the required separation of powers while most effectively operating the Municipal Court with respect to State Supreme Court General Rule 29 attached hereto and made apart hereof by reference. However, the parties acknowledge that the City hires, pays, and terminates all personnel of the court, and that they are a part of a labor union not controlled by the judge.

B. Compliance with Indigent Standards. Judge shall comply with all the Standards for Indigent Defense as set forth in Rules for Courts of Limited Jurisdiction. This shall include, but not be limited to, certifying caseload limits of attorneys representing indigent clients, providing quarterly feedback to the City regarding sufficiency of public defense services, as well as analyzing the data provided by public defenders on trials, motions, hours worked on each case, and number of dismissals. The Judge also has a duty to inquire of the defendant about the amount of time and opportunity to meet with their public defender prior to accepting any plea agreements.

C. Meetings. Judge will meet with the City at least quarterly, or more frequently as requested by either party, to consider Court operations, budget, personnel or any other Court matters.

D. Personnel and Financial Function. Judge will participate in the review of any revisions or amendments to court personnel rules and policies and shall direct court employees in performance of duties to implement and promote efficient court operations and may direct implementation of new procedures to promote efficient operation of the court.

E. Adjudication. Judge shall be available, consistently and punctually, to adjudicate all Municipal litigation on the dockets. Designation and scheduling of dockets may be amended from time to time to meet the needs of the court. All dockets shall continue until scheduled cases for that docket are adjudicated or continued.

3. Inter-Department Cooperation. Judge shall endeavor to administer the Court at all times so as to comply with any reasonable requests of any other municipal department, or the executive or legislative branches of City government, so long as such compliance does not impair the necessary independence of the Court. Judge will comply with written directives from the Mayor and/or City Manager which apply to administrative and financial matters; such directives will not apply to judicial issues.

4. Length of Term. Unless earlier terminated as provided below, the term of employment shall commence on August 1, 2014 and continue through December 31, 2017. This Agreement shall renew automatically upon future appointments of service for this Judge unless modified by mutual agreement of the parties.

5. Compensation. Judge shall be compensated \$81,000.00 per year, commencing August 1, 2014, payable in monthly installments of \$6,750.00 gross, no later than the 1st day after the end of the month.

The compensation of the Judge shall be reduced by the rate set forth in the City's budget ordinance for each hour that a Judge Pro Tem serves in place of the Judge; provided, that no reduction in compensation of the Judge shall occur when a Judge Pro Tem serves in the place of the Judge: (a) For the first 40 hours during each calendar year when the Judge is not present at the Court; (b) While the Judge is disqualified from hearing a case following the filing of an Affidavit of Prejudice; (c) While the Judge has disqualified himself from hearing a proceeding in which his impartiality might reasonably be questioned; or (d) While the Judge attends DMCJA Conferences or required Judges' meetings, seminars, or continuing legal/judicial credit courses.

In the event Judge is not able to fulfill the judicial and/or administrative duties due to suspension by the Washington State Commission on Judicial Conduct, such time period shall be considered leave without pay.

City shall provide for the Judge's full membership in the State's District and Municipal Court Judge's Association, including registration fees and required materials, if any, for the association's conferences. City shall also provide payment for any continuing legal education courses required for the judicial position by the state, county or local rulings to the extent that funds are budgeted annually for such expenses.

6. Billing and Payment. For the year 2014, requests for reimbursements of fees, dues and costs provided in Section 4 above, over and above the monthly compensation, which are not paid directly or in advance by the City shall be presented by the Judge with appropriate and necessary documentation to the City in accordance with the policies and forms of the City. City shall make payment to Judge no later than the 20th day of the following month. For any renewal of this Agreement, the costs of training and attendant travel will be included in the annual budget and paid in accordance with the policies and forms of the City.

7. Nature of Relationship. The Judge shall be considered an independent contractor for purposes of compensation, taxes and benefits. Judge agrees that he is solely responsible for paying federal income tax and other taxes, fees or charges. Judge shall not be entitled to sick leave, vacation, overtime, compensatory time or any other benefits not specifically addressed and provided for in the Agreement. Judge agrees not to perform professional services for other clients where a conflict of interest or ethical violation as defined in the Rules of Professional Conduct may exist.

In the event that Judge is not able to fulfill the judicial and/or administrative duties due to suspension by the Washington State Commission on Judicial Conduct, such time period shall be considered leave without pay and City may use pro-tem services pending completion of the suspension. The City reserves the right to place Judge on administrative leave, with or without pay, and use pro-tem services pending completion of an investigation by the Commission.

8. Termination of Agreement. The City may immediately terminate this Agreement for cause as set forth in RCW 3.50.095. For the purpose of this Agreement, the failure of Judge to perform the duties provided in Section 1 above, shall constitute misconduct or malfeasance in office. This agreement may be terminated prior to expiration of such term by mutual agreement of the parties by giving sixty (60) days written notice of intent to terminate by either party. Upon

termination, the obligations of the parties herein shall cease, except those continuing duties mandated by law or court rule.

9. The Judge is an appointed official of the City. The City agrees to indemnify, defend and hold the Judge harmless for any and all claims, losses, actions or liabilities (including all costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, assigns, licensees, or representatives, for any acts of the Judge that are within the scope of his official duties.

The Judge agrees to waive any claims he/she may have against the City, its officers, agents, employees, or volunteers for injuries or losses for which the Judge is covered under the Washington State Industrial Insurance Act, Title 51 RCW. This waiver is mutually negotiated by the parties.

10. General Provisions.

A. For the purpose of this Agreement, time is of the essence with respect to the performance of any of the provisions hereof.

B. **Dispute Resolution.** In the event of a dispute regarding the breach, interpretation, or enforcement of this Agreement, Judge and the City Manager of the City of Sunnyside shall meet in an attempt to settle such dispute. Any disputes remaining unresolved following such meeting shall be litigated in the Yakima County Superior Court, and the prevailing party shall be entitled to its reasonable attorney fees and costs as additional judgment against the other.

C. This Agreement represents the entire Agreement between the parties with respect to the subject matter hereof. All prior negotiations, agreements, representations, warranties or other matters of like or any other nature shall be of no further force or effect or superseded by this written Agreement. Notwithstanding any course of dealing to the contrary, this Agreement shall not be amended or modified in any manner other than by an instrument in writing, signed by all parties.

D. **Notice.** Notice given pursuant to this Agreement shall be in writing to the parties as follows. Any notice required to be given by the parties shall be delivered to the addresses set forth below:

CITY: City Manager
City of Sunnyside
818 East Edison Ave.
Sunnyside, WA 98944

JUDGE: Steven L. Michels
702 East Edison Ave.
P.O. Box 195
Sunnyside, WA 98944

E. **Severability.** In the event any provision of this Agreement shall be held invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

EXHIBIT "A"

- F. Governing Law. This Agreement is made and shall be governed by and interpreted in accordance with the laws of the State of Washington.
- G. Subsequent Changes of Law. The Parties recognize that this Agreement is governed by the Revised Code of Washington and rules promulgated by the Washington Supreme Court and applicable court decisions and therefore, agree that any modifications and/or amendments to the law or court rule or court decisions during the term of this agreement will control.
- H. Assignment. Neither the Judge nor the City shall have the right to transfer or assign in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other party. The use of Judges Pro Tern, Commissioners, or Commissioners Pro Tern shall not be deemed a transfer or assignment.

CITY OF SUNNYSIDE

Don Day, City Manager

Date

APPROVED AS TO FORM:

Leland B. Kerr, City Attorney

Date

MUNICIPAL COURT JUDGE

Steven L. Michels

Date