



ORIGINAL

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, APPROVING
AGREEMENT FOR ATTORNEY SERVICES,
SUNNYSIDE MUNICIPAL COURT- PUBLIC DEFENDER
WITH THE LAW OFF OF BECK AND PHILLIPS, PLLC**

WHEREAS, the City of Sunnyside operates a municipal court as previously created pursuant to city ordinance and state statute; and

WHEREAS, state and federal law require that a court provide legal representation for indigent defendants charged with certain criminal offenses; and

WHEREAS, the parties have negotiated an agreement for provision of such legal services; and

WHEREAS, the City Council of the City of Sunnyside finds and determines that the acceptance 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 Attorney Services," a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, by and between the City of Sunnyside and the Law office of Beck and Phillips, PLLC, is hereby approved; and the City Manager is hereby authorized to execute such agreement for and on behalf of the City of Sunnyside and to take all reasonable actions reasonable and necessary to administer performance of such agreement.

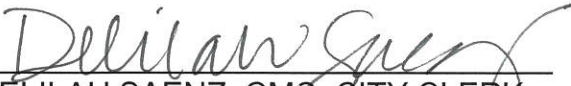
SECTION 2. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 9th day of March, 2015.



JAMES A. RESTUCCI, MAYOR

ATTEST:



DELILAH SAENZ, CM3, CITY CLERK

APPROVED AS TO FORM:



KERR LAW GROUP, PLLC
Attorneys for the City of Sunnyside

**AGREEMENT FOR INDIGENT CRIMINAL DEFENSE
PERSONAL SERVICES AGREEMENT**

WHEREAS, the City of Sunnyside, Washington (hereinafter "City") provides indigent defense services to individuals who have been certified for representation in criminal charges before the Sunnyside Municipal Court (hereinafter "Municipal Court") located at Sunnyside Law and Justice Center, 401 Homer Street, Sunnyside, WA 98944; and

WHEREAS, the Law Office of Beck and Phillips, PLLC (hereinafter "Attorney") is a licensed attorney in good standing in the State of Washington who has been selected to perform services to indigent defense clients under contract with the City; and

WHEREAS, the City has adopted the Standards for Public Defense, attached hereto as Exhibit "A" and incorporated herein by this reference, ("Standards") pursuant to the requirements of RCW 10.101.030. NOW, THEREFORE,

IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, it is agreed as follows:

1. Scope of Services, Standards and Warranty.

- 1.1 The Attorney will provide indigent defense services in accordance with the Standards for Indigent Defense and Certification and Compliance as approved by the Washington Supreme Court by its Order of September 7, 2012, found at CrRLJ 3.1, and as may thereafter be amended, including required consultation with incarcerated and non-incarcerated defendants.
- 1.2 The Attorney warrants that he/she is and during the term of this Agreement, qualified to provide indigent criminal defense as defined by Standard 14; and further warrants that he/she and every attorney and/or intern employed by the Attorney to perform services under this Agreement has read and is fully familiar with the provisions of the Washington Supreme Court Rules and the Standards, including the qualifications provided in Standard 14, as adopted by the City; and *Wilbur vs. City of Mount Vernon*, No. CL-1100RSL (December 2013).
- 1.3 Compliance with these Standards goes to the essence of this Agreement. The Attorney, and every attorney and/or intern performing services under this Agreement, shall certify compliance quarterly with the Municipal Court on the form established for that purpose by Court Rule.
- 1.4 The Attorney will collect and maintain data on a quarterly basis reporting to the City without violating client privileged communications, the following:
 - 1.4.1 The number of cases assigned during the period;

EXHIBIT "A"

- 1.4.2 The number of hours spent each week on cases assigned under this contract, provided however the attorneys are not required to report hourly per case but rather will be allowed to show which hours and dates were dedicated solely to working on the cases assigned under this contract. If, however, the need arises for the City to be able to report the number of hours worked on EACH CASE to comply with the aforementioned Standards, or, for reporting purposes to the Office of Public Defense, then the Attorney will be responsible to assist the City by compiling and reporting that information in a timely manner without additional costs to the City;
- 1.4.3 The number of cases which proceed to trial and whether those are a trial to the bench or jury;
- 1.4.4 The number of outside, private cases and the number and types of all private practice cases per each attorney.
- 1.5 Attorneys who provide public defense services must limit their privately retained work as not to exceed the case limits as required by the Standards.
- 1.6 The attorney, without violating attorney-client privilege, will co-operate with the City to verify that the attorney and client are communicating privately prior to court appearances and/or resolution of cases assigned under this contract.
- 1.7 The Attorney further warrants that all infrastructure, support, administrative services, computerized legal research and systems necessary to comply with the Standards, is available to the Attorney, and will further notify the City immediately if unable or fails to meet the required Standards.
- 1.8 The Attorney shall provide the certification by either electronic or paper form no later than the tenth day of the month succeeding the quarter when a case is assigned.

2. Compensation.

- 2.1 Base Caseload. City shall pay to the attorney for services rendered under this agreement **Two hundred and forty Dollars (\$240.00)** per case, with a base case load of Two hundred (200) cases or case equivalents for a total yearly compensation of **Forty-eight thousand dollars (\$48,000.00)** per year. Payments shall be made each month for 24 months at the rate of **four thousand dollars (\$4,000.00)** per month, payable on or before the last day of each month.

EXHIBIT "A"

- 2.2 Case Counts. For the purpose of this Agreement, a "case" is defined as the filing of a document with the Court naming a person as a defendant or respondent to which an attorney is appointed in order to provide representation. Included as a single case are multiple citations arising out of or related to the same incident or event. The services provided by the Attorney will include all necessary pre-trial hearings, motions, investigations, the entry of a deferred prosecution order, and a trial if tried to a Judge rather than a jury.
- 2.2.1 Case Equivalent Defined. For the purposes of this Agreement a "case equivalent" is defined as any post-judgment hearing in which jail is a potential penalty. A post-judgment hearing includes; contempt of court for failing to pay fines, failure to comply with the terms of probation, alleged violations of an order deferring prosecution, or allegations of a violation of a stipulated order continuing a case on conditions. Each case equivalent will be counted as .5 of one case for the purpose of calculating compensation and case load maximums.
- 2.2.2 Jury Trial Stipend. The Attorney will be paid Four Hundred and Fifty Dollars (\$450.00) per jury trial. To qualify for the stipend the Attorney must litigate the case from appointment until a judgment is rendered by a jury on the record. The Attorney will submit an invoice to the City showing the name of the defendant, the case number, the date of the jury trial and the judgment rendered by the jury.
- 2.3 Case Assignment. The maximum cases and case equivalents for which defense services shall be provided during any 12-month period during the term of this Agreement shall be 200 total cases or case equivalents as calculated, and certified by the Attorney in accordance with the Standards. Upon adoption of a case weighting criteria by the Supreme Court, pursuant to Standard 3.5, the City reserves the right to revise the case count to maximum cases permitted under such schedule as approved by the Supreme Court and adopted by the City, but the adoption shall not affect the terms of this Agreement.
- 2.4 Adjustment. As provided in the Standards, case counts may be revised upwards based upon a variety of factors. Upon the Attorney's request, the City shall review any particular case with the Attorney to determine whether greater weighting should be assigned, and upward revisions shall not be unreasonably refused.
- 2.5 Base Compensation. Except as expressly provided in Section 2.5 below, the cost of all infrastructure administrative, computerized legal research,

EXHIBIT "A"

support and systems as well as standard overhead services necessary to comply with the established standards is included in the base payment provided in Section 2.1 above.

- 2.6 Payments in Addition to the Base Compensation. The City shall pay the following case expenses when reasonably incurred and approved by the Municipal Court from funds available for that purpose:

2.6.1 Discovery. Discovery shall be provided in accordance with law and Court Rule by the City Prosecutor. For post-conviction relief cases, discovery includes the cost to obtain a copy of the defense, prosecuting attorney making this charge or Court files pertaining to the underlying case.

2.6.2 Preauthorized Non-Routine Expenses. Non-routine case expenses requested by Attorney and preauthorized by order of the Municipal Court. Unless the services are performed by Attorney's staff or subcontractors, non-routine expenses include, but are not limited to:

- (i) medical and psychiatric evaluations;
- (ii) expert witness fees and expenses;
- (iii) interpreters for languages not commonly spoke in the City or interpreters for services other than attorney/client communication;
- (iv) forensic and other scientific tests;
- (v) investigation expenses; and
- (vi) any other non-routine expenses the Municipal Court finds necessary and property for the investigation, preparation, and presentation of a case.

2.6.3 Lay Witness Fees. Lay witness fees and mileage incurred in bringing defense witnesses to Court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

2.6.4 Copying Clients' Files. The cost, if it exceeds \$25.00, of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief or habeas corpus attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;

EXHIBIT "A"

- 2.6.5 Copying Direct Appeal Transcripts for RALJ Appeals. The cost, if it exceeds \$25.00, of making copies of direct appeal transcripts for representation in post-conviction relief cases. Attorney is limited to no more than two copies.
- 2.6.6 Records. Medical, school birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$75.00; and
- 2.6.7 Process Service. The reasonable cost for the service of a subpoena.
- 2.7 Renegotiation Due to Increases or Decreases in Case Load. The City and Attorney may, at the option of either party, renegotiate this Agreement if there is a significant increase or decrease in the number of cases assigned. "Significant decrease" and "significant increase" shall mean a decrease or increase, respectively, of more than twenty percent (20%) in the number of cases assigned or, in the alternative, a decrease or increase in the number of cases assigned. At the request of either party, the City and Attorney will periodically review cases assignment trends, requests for additional credits and any other matters needed to determine contract compliance or necessary contract modifications.
- 2.8 Renegotiation Due to Change in Rule or Standard. This Agreement may be renegotiated at the option of either party if the Washington State Supreme Court, the Washington State Bar Association, or the City significantly modifies the Standards for Indigent Defense adopted pursuant to Court Order or City Resolution.
- 2.9 Recusal. In the event that the Attorney is unable to accept an assignment, due to conflict or otherwise, the Attorney shall provide immediate notice to the City of the conflict and the City shall assign the case to Conflict Counsel. In the event the Attorney is unable to accept or perform assigned indigent defense cases for more than five percent (5%) of the assigned cases during any 12-month period, the City may terminate this Agreement.
- 2.10 Variation in Caseload: The parties recognize that prediction and assignment of caseload is an imprecise and dynamic process, difficult to estimate and apply with precision, and subject to variation. Notwithstanding the other applicable terms of this contract, the parties agree that the variation in actual caseload experience compared to contracted basic caseload will be as follows:
 - 1.) Credit for a case is dependent upon it actually being assigned and counted towards the Attorney's basic caseload under the terms of this contract, and work done in accord with the other terms and conditions of this contract.

EXHIBIT "A"

In addition to other provisions of this contract, cases in which the attorney withdraws for a conflict before or at the first status conference/pre-trial hearing will not be counted as a case or case equivalent unless the attorney has performed substantial work on the case and can document time spent on that particular case.

- 2.) The parties agree that the actual caseload may vary up or down by 2% or four (4) cases of the contracted maximum caseload, rounded to the nearest half case credit, without decrease in the Attorney's compensation for basic caseload and without obligation by the City to pay for excess cases. The parties acknowledge the Standards for indigent defense set a maximum limit on misdemeanor caseloads for attorneys at 400 case per year for a full time contract and the attorney may decline representation on assigned cases even within the variance if accepting such cases would violate the Standards as adopted.
- 3.) Nothing in this contract obligates the attorney to accept cases above the contract and variance level, even with extra compensation, if it prevents the attorney from providing professional effective indigent defense services in accordance with this contract.
- 4.) The City will make good faith efforts to keep caseload within the contract and variance levels.
- 5.) The attorney will exercise diligence and accuracy in reporting caseload as required, paying particular attention to report cases that do not count towards caseload.
- 6.) Notwithstanding the other provisions of this contract, no excess case payments will be made to the attorney during the calendar year. No interim credit calculation reports are required. Either party may request a credit calculation if it appears that the assigned caseload varies from the contracted amount.
- 7.) If actual caseload, calculated at the end of a contract calendar year or effective date of contract termination, exceeds the contracted caseload/variance level allowed herein, then the excess case provision and

EXHIBIT "A"

compensation will apply for any cases above the variance level. The average per case fee used to calculate excess case fees will be the case rate contained in paragraph 2.1.

- 8.) If actual caseload, calculated at the end of a contract calendar year or effective date of termination, is less than the contracted caseload/variance level, then prior payments for basic caseload above the actual caseload and below the variance level will be an overpayment and must be reconciled. Any funds paid which exceed the amount due under any applicable provision of this contract will either be repaid to the City at the termination of this contract, offset from any other compensation due under the terms of this contract, or applied as credit against the compensation for future cases assigned to the attorney, in whichever manner the City prefers.
- 9.) If it appears, as of the first week of December of each year that this contract is in effect, that the attorney's annual caseload will be below the contracted caseload variance level, the City may withhold and reserve all or part of the December payment for basic caseload compensation pending final calculations of the attorney's actual caseload credit.
- 10.) Within ten (10) days of the end of each calendar year the attorney shall calculate and report case credits for the calendar year and report them to the City. In the event of termination of this contract such calculation and report is due within ten (10) days after case assignments end.
- 11.) The City's designated staff will provide the attorney with the City's calculation of caseload credit within ten (10) days after receipt of the attorney's year end caseload reports or after the attorney's final caseload report on termination of the contract, provided the City disagrees with the attorney's year end calculation. If the attorney disagrees with the accuracy of the City's calculation the attorney may request an adjustment in writing within three (3) days after issuance of the City's calculation. If no adjustment is requested, the City's calculation will be final unless later adjustment is agreed upon by the parties. If an adjustment is requested, the attorney and the City's designated staff will examine and discuss any requested calculation adjustments. Disagreements may be referred to the Municipal Court Administrator who will meet with the attorney and both

EXHIBIT "A"

parties will discuss the difference in good faith. If no agreement can be reached, the decision of the Municipal court administrator will be final.

After final calculation of year-end or end of contract caseload, payment of excess case compensation will follow within the City's next warrant issue cycle. If an overpayment has occurred, the City may withhold or reserve all or part of the amount from the next payment(s) due attorney under this contract and/or notify the attorney of an alternative proposal, which will be final unless the attorney requests a meeting with the City to discuss

3. **Term.** The term of this Agreement shall be for two (2) years commencing on the 10th day of March, 2015, and terminating twenty-four (24) months thereafter, unless earlier terminated.

The parties agree to review and re-negotiate the fee compensation schedule under paragraph 2.1 after 12 months.

4. **Termination.** Either party to this contract may terminate this contract upon **Sixty (60)** days written notice of their intent to terminate.

- 4.1 **For Cause.** This Agreement may be terminated for cause for violation of any material term of this Agreement. "Material term" shall include any violation indicating a failure to provide representation in accordance with the rules of the Court and the ethical obligations established by the Washington State Bar Association; a violation of the Standards; violation of Section 6 relating to insurance; conviction of a criminal charge; or a finding that the license of the Attorney, or any attorney providing service under this Agreement, has been suspended or revoked. Any violation of the other provisions of this Agreement shall be subject to cure. Written notice of Agreement violation shall be provided to the Attorney who shall have ten (10) business days to correct the violation. Failure to correct the violation will give rise to termination for cause at the City's discretion. In lieu of terminating this Agreement, the City may agree in writing to alternative corrective measures.

- 4.2 **Termination on Mutual Agreement.** The parties may agree in writing to terminate this Agreement at any time. Unless otherwise agreed to in writing, termination or expiration of this Agreement does not affect any existing obligation or liability of either party.

- 4.3 **Obligations Survive Termination.** In the event of termination of this Agreement, the following obligations shall survive and continue:

- 4.3.1 **Representation.** The compensation established in this Agreement compensates Attorney for services relating to each and every

EXHIBIT "A"

assigned case. Therefore, in the event this Agreement is terminated, Attorney will continue to represent clients on assigned cases until a case is concluded by entry of an order of dismissal, entry of a stipulated order continuing the prosecution of the matter on conditions, entry of an order deferring prosecution, entry of a judgment and sentence, if the matter is a post-judgment case then the entry of an amended judgment and sentence.

4.3.2 The provisions of Section 1 "Scope of Services, Standards and Warranty"; Section 5 "Indemnification"; and this Section 3.3 shall survive termination as to the Attorney. The City shall remain bound by the provisions of Section 2.5 "Payments in Addition to the Base Compensation" with respect to cases concluded after the termination of this Agreement.

5. **Nondiscrimination.** Neither the Attorney nor any person acting on behalf of the Attorney, shall, by reason of race, creed, color, national origin, sex, sexual orientation, honorably discharged doctrine or military status or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability, discriminate against any person who is qualified and available to perform the work to which the employment relates, or in the provision of services under this Agreement.

6. **Indemnification.**

6.1 The Attorney agrees to hold harmless and indemnify the City, its officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Attorney's fees or awards, and including claims by Attorney's own employees to which Attorney might otherwise be immune under Title 51 arising out of or in connection with any willful misconduct or negligent error, or omission of the Attorney, his officers or agents.

6.2 It is specifically and expressly understood that the indemnification provided herein constitutes the waiver of the Attorney's waiver of immunity under Title 51 RCW solely for the purposes of this indemnification. The parties have mutually negotiated this waiver.

6.3 This clause shall survive the termination or expiration of this Agreement and shall continue to be in effect for any claims or causes of action arising hereunder.

7. **Insurance.** The Attorney shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or property which may arise from or in connection with the performance of work hereunder by the

EXHIBIT "A"

Attorney, or the agents, representatives, employees, or subcontractors of the Attorney.

7.1 Minimum Scope of Insurance. Attorney shall obtain insurance of the types described below:

7.1.1 Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington, if required by State law.

7.2.2 Professional Liability insurance appropriate to the Attorney's profession.

7.2 Minimum Amounts of Insurance. Attorney shall maintain Professional Liability insurance with limits no less than \$50,000 per claim. The policy shall contain no exclusion for loss or liability relating to a claim of ineffective assistance of counsel.

7.3 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

7.4 Verification of Coverage. Attorney shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work.

8. **Work Performed by Attorney.** In addition to the responsibilities mentioned in Section 1 above, the Standards for Indigent Defense (SID) and Certification and Compliance approved by the Washington Supreme Court by its Order of September 7, 2012 found at CrRLJ 3.1, the Attorney shall complete seven (7) hours of continuing legal education within each calendar year of this Agreement in courses relating to public defense practice including, but not limited to, consequences of the conviction or adjudication, including possible immigration consequences and a possibility of civil commitment proceedings based upon a criminal conviction; statutes, Court Rules, Constitutional provisions, and case law relevant to public defense practice; and such other courses and study to maintain the qualification familiarity as required under Standard 14.1. In addition to compliance with the Standards, in the performance of work under this Agreement, Attorney shall comply with all Federal, State and City laws, ordinances, rules and regulations which are applicable to Attorney's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

EXHIBIT "A"

9. **Work Performed at Attorney's Risk.** Attorney shall be responsible for the safety of its employees, agents, and subcontractors in the performance of work hereunder, and shall take all protections reasonably necessary for that purpose. All work shall be done at the Attorney's own risk, and the Attorney shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the work. Attorney shall also pay its employees all wages, salaries and benefits required by law and provide for taxes, withholding and other employment related charges, taxes or fees in accordance with law and IRS regulations.
10. **Personal Services, No Subcontracting.** This Agreement has been entered into in consideration of the Attorney's particular skills, qualifications, experience, and ability to meet the Standards incorporated in this Agreement. Therefore, the Attorney has personally signed this Agreement below to indicate that he/she is bound by its terms. This Agreement shall not be subcontracted without the express written consent of the City and refusal to subcontract may be withheld at the City's sole discretion. The City specifically authorizes and accepts the appearance of any qualified attorney employed by the Law Office of Beck and Phillips, PLLC, to appear and litigate any matters assigned under this Agreement. Any assignment of this Agreement by the Attorney without the express written consent of the City shall be void.
11. **Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the City and the Attorney.
12. **Entire Agreement.** The written provisions in terms of this Agreement, together with any exhibit attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statement(s) shall not be effective or construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.
13. **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 the Agreement or such other address as may be hereinafter specified in writing:

City:

Delilah Saenz, City Clerk
City of Sunnyside
818 East Edison Avenue
Sunnyside WA 98944
dsaenz@sunnyside-wa.gov

EXHIBIT "A"

Attorney:

Law Office of Beck and Phillips, PLLC
723 Sixth Street, Suite 100
Prosser, WA 99350

_____ (email)

14. **Nonwaiver 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 such covenants, agreements, or options, and the same shall be and remain in full force and effect.
15. **Resolutions of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms or conditions contained in this Agreement, the matter shall be referred to a neutral third party to arbitrate the dispute. The arbitrator shall be agreed upon by both parties. Arbitration shall be conducted according to the mandatory arbitration rules of Washington State. Provided, however, that any complaint regarding any violation of the Standards or which relate to any manner whatsoever to trial strategy or an ongoing case, shall be referred to the Judge of the Municipal Court or to the Washington State Bar Association as appropriate. Nothing herein shall be construed to obligate, require or permit the City, its officers, agents, or employees to inquire into any privileged communication between the Attorney and any indigent defendant. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for reasonable attorney's fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and the rules of the Washington Supreme Court as applicable. Venue for an action arising out of this Agreement shall be in Yakima County, Washington Superior Court.

IN WITNESS WHEREOF, the parties have executed this Agreement on the ____ day of _____, 2015.

CITY

ATTORNEY

Don Day, City Manager

Approved as to Form:

Printed Name

Leland B. Kerr, City Attorney