

**ORIGINAL**

RESOLUTION 2011 - 43

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF SUNNYSIDE, WASHINGTON, APPROVING  
SUNNYSIDE SENIOR CENTER SITE USE AGREEMENT WITH  
PEOPLE FOR PEOPLE**

**WHEREAS**, People for People is willing and able to provide food and nutrition services to senior citizens at the Sunnyside Senior Center, 1400 Federal Way, Sunnyside, WA; and

**WHEREAS**, the City Council finds and determines that the Sunnyside Senior Center Site Use Agreement attached hereto as Exhibit 'A' is in the best interest of the City and the health, safety and welfare of the City's residents; and

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

**SECTION 1.** That the Sunnyside City Council hereby approves the Sunnyside Senior Center Site Use Agreement in the form attached hereto as Exhibit 'A' and authorizes the City Manager to execute and deliver such agreement and to take all actions reasonable and necessary to administer performance of such agreement.

**SECTION 2.** That this Resolution shall be effective upon passage and signatures hereon in accordance with law.

**PASSED** this 27<sup>th</sup> day of June, 2011.

  
\_\_\_\_\_  
JAMES A. RESTUCCI, MAYOR

ATTEST:

  
\_\_\_\_\_  
DEBORAH A. ESTRADA, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
MENKE, JACKSON, BEYER, EHLIS & HARPER, LLP  
ATTORNEYS AT LAW

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SUNNYSIDE SENIOR CENTER  
SITE USE AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Sunnyside (hereinafter the "City"), and People for People.

WHEREAS, People for People provides food and nutrition services to senior citizens, and

WHEREAS, People for People desires to provide these services at the Sunnyside Senior Center, 1400 Federal Way, Sunnyside, WA 98944 in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein it is agreed by and between the City and People for People as follows:

1. **Food Services.** People for People shall provide food services to senior citizens at the Sunnyside Senior Center generally between 10:00 a.m. to 2:00 p.m., Monday, Tuesday, Thursday and Friday. People for People shall utilize the dining room, kitchen facilities and equipment, dishes, utensils and glassware at the Sunnyside Senior Center for these purposes. People for People shall request permission in advance to use the said facilities and equipment in the event such use is needed outside the said time period. After each use, People for People shall leave the kitchen, kitchen facilities/equipment, dishes, glassware, and utensils in a clean and orderly condition.

The City shall notify People for People at least three (3) business days in advance if use of the Senior Citizen Center space and facilities for other purposes is going to pre-empt People for People's food service operation at the Center. Additionally, the City will try to schedule outside speakers and activities at the Center in a manner that will not unduly interfere with People for People's food service operations at the Center. The City shall be responsible for maintaining the kitchen facilities and associated equipment.

2. **Consideration.** As consideration for the food services provided pursuant to this Agreement, the City agrees that it will forego any fees to People for People for use of the Sunnyside Senior Center for such operation. People for People shall provide the City with an "in-kind" receipt on a quarterly basis for use.

3. **Term of Agreement.** The term of this Agreement shall commence on July 1, 2011 and shall continue until terminated by either party in accordance with Section 16 of this Agreement.

4. **Independent Contractor.** People for People and the City understand and expressly agree that People for People is an independent contractor, and none of People for People's employees shall be considered an employee of the City. People for People and People for People's employees shall make no claim of City employment or claim any related employment benefits from the City, including but not limited to, medical benefits, social security, and retirement benefits.

EXHIBIT 'A'

5. **Taxes and Assessments.** People for People shall be solely responsible for compensating its employees and for paying all related taxes, deductions, and assessments, including but not limited to, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement.

6. **Insurance.** People for People understands and acknowledges that the City maintains comprehensive liability insurance for its benefit, and further, that such insurance does not provide any coverage for the benefit of People for People, including its officials, officers, agents, and employees. People for People shall maintain a policy of comprehensive liability insurance with combined single limit coverage of at least \$5,000,000 for the duration of this Agreement. People for People shall provide the City with a certificate of insurance or insurance binder evidencing that said insurance is in effect. People for People is required to provide 30 day notice of cancellation of such insurance and provide proof of continued coverage.

7. **Nondiscrimination.** With regard to the provision of food services under this Agreement, People for People shall not illegally discriminate against any person on the grounds of race, creed, color, religion, national origin, political affiliation, sex, marital status, age, or the presence of any sensory, mental, or physical handicap.

8. **The Americans With Disabilities Act.** People for People agrees to comply with the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 *et. Seq.* (ADA), and its implementing regulations, and its state counterpart contained in RCW Chapter 49.60 and its implementing regulations. The ADA and RCW Chapter 49.60 provide comprehensive civil rights to individuals with disabilities in the area of employment, public accommodations, state and local government services, and telecommunications.

9. **Compliance With Law.** People for People agrees to perform the services under and pursuant to this Agreement in full compliance with any and all applicable laws, rules, and regulations adopted or promulgated by any governmental agency or regulatory body, whether federal, state, local, or otherwise.

10. **Indemnification and Hold Harmless.**

- a. People for People agrees to hold harmless, indemnify, and defend the City, its elected officials, officers, employees, and agents from and against any and all suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees) which result from or arise out of the sole negligence of People for People, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of People for People's services, duties and obligations under this Agreement.
- b. The City agrees to hold harmless, indemnify, and defend People for People, its elected officials, officers, employees, and agents from and against any and all suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees) which result from or arise out of the sole negligence of the City, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of the City's services, duties and obligations under this Agreement.

EXHIBIT 'A'

- c. In the event that the officials, officers, agents, and/or employees of both People for People and the City are negligent, each party shall be liable for its contributory share of negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees).
  - d. Nothing contained in this Section or this Agreement shall be construed to create a right of indemnification in any third party.
  - e. This Paragraph 10 shall survive the termination of this Agreement.
11. **Delegation of Professional Services.** The services provided for herein shall be performed by People for People, and no other persons other than regular associates or employees of People for People shall be engaged upon such work or services except upon written approval of City.
12. **Assignment.** This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by People for People to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of People for People as stated herein.
13. **Waiver of Breach.** The waiver by People for People or the City of the breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by either party or prevent either party thereafter enforcing any such provision.
14. **Severability.** If any portion of this Agreement is changed per mutual agreement or any portion is held invalid; the remainder of the Agreement shall remain in full force and effect.
15. **Integration.** This Agreement sets forth all the terms, conditions, and agreements of the parties relative to the subject matter hereof and supersedes any and all such former agreements which are hereby declared terminated and of no further force and effect upon the execution and delivery hereof. There are no terms, conditions, or agreements with respect thereto, except as herein provided and no amendment or modification of this Agreement shall be effective unless reduced to writing and executed by the parties.
16. **Termination.** Either party may terminate this Agreement, with or without cause, by giving the other party thirty (30) days advance written notice of termination.
17. **Notices.** Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand delivered to the parties to their addresses as follows:

EXHIBIT 'A'

TO CITY:

Mark J. Gervasi, City Manager  
City of Sunnyside  
818 E, Edison Avenue  
Sunnyside, WA 98944  
(509) 836-6300

TO PEOPLE FOR PEOPLE:

Madelyn Carlson  
Chief Executive Officer  
People for People  
304 West Lincoln  
Yakima, WA 98902  
(509) 248-6726

Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand delivered. Such notices shall be deemed effective at the time mailed or hand delivered at the address specified above. Each party shall provide written notification within 15 calendar days of change of address.

18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

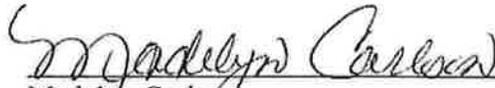
19. **Venue.** The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Yakima County, Washington.

20. **Approval and Filing.** Each party shall approve this Agreement by resolution, ordinance or otherwise pursuant to the laws of the governing body of each party. The attested signatures of the City Manager and People for People Commissioners below shall constitute a presumption that such approval was properly obtained.

CITY OF SUNNYSIDE

PEOPLE FOR PEOPLE

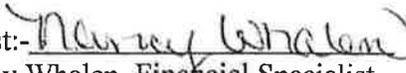
By: \_\_\_\_\_  
Mark J. Gervasi  
City Manager

  
\_\_\_\_\_  
Madelyn Carlson  
Chief Executive Officer

Date: \_\_\_\_\_

Date: 6-8-11

Attest:- \_\_\_\_\_  
City Clerk

Attest:-   
\_\_\_\_\_  
Nancy Whalen, Financial Specialist

City Contract No. \_\_\_\_\_

Resolution No. \_\_\_\_\_