

ORIGINAL

RESOLUTION 2011 - 53

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, APPROVING
ADDENDUM TO AGREEMENT FOR ATTORNEY
SERVICES, SUNNYSIDE MUNICIPAL COURT - PUBLIC DEFENDER,
BARRY M. WOODARD**

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 City entered into an Agreement for Attorney Services, Sunnyside Municipal Court-Public Defender with Barry M. Woodard, attorney at law, on January 12, 2009, and the City wishes to continue such agreement by addendum through December 31, 2011; and

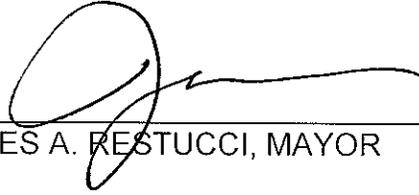
WHEREAS, the City Council of the City of Sunnyside finds and determines that the acceptance of such addendum is in the best interests of residents of the City of Sunnyside and will promote the general health, safety and welfare.

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

SECTION 1. That the "Addendum to Agreement for Municipal Services, Sunnyside Municipal Court-Public Defender," a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, by and between the City of Sunnyside and Barry M. Woodard, is hereby approved; and the City Manager is hereby authorized to execute such addendum for and on behalf of the City of Sunnyside and to take all reasonable actions reasonable and necessary to administer performance of such addendum.

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

PASSED this 25th day of July, 2011.



JAMES A. RESTUCCI, MAYOR

ATTEST:



DEBORAH A. ESTRADA, CITY CLERK

APPROVED AS TO FORM:



MENKE JACKSON BEYER EHLIS & HARPER, LLP
Attorneys for the City of Sunnyside

**ADDENDUM to
AGREEMENT FOR ATTORNEY SERVICES
Sunnyside Municipal Court – Public Defender**

THIS ADDENDUM, dated this _____ day of July, 2011, supplements the existing "Agreement for Attorney Services Sunnyside Municipal Court – Public Defender" entered into by and between the CITY OF SUNNYSIDE, a municipal corporation hereafter called "City," and BARRY M. WOODARD, attorney at law, hereafter referred to as "Attorney," on the 12th day of January, 2009. This Addendum is supplemental only and, except as amended or modified in this Addendum, all terms and conditions of the original "Agreement for Attorney Services Sunnyside Municipal Court – Public Defender" shall remain in full force and effect.

I. Definitions.

(a) Case Appointment. "Appointment" means the formal referral to the Attorney of a case under referral procedures established by the City through the Sunnyside Municipal Court (hereinafter referred to as "Municipal Court").

(b) Case. A "case" shall be defined as a criminal citation filed by the City against an indigent defendant. Multiple counts charging crimes of the same or similar character, or based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, shall be considered, for purposes of this Contract, to be a single "case" if they are scheduled for concurrent trials. A case shall commence upon post-arraignment formal referral of an indigent defendant to the Attorney by the Municipal Court, and shall terminate upon entry of the final appealable order by said Court, plus any original post-trial sentencing proceedings or filing or perfection of an appeal from a final order. The Attorney's legal services on occasion shall include, but are not necessarily limited to, appearance at post-arraignment hearings for pre-trial release from confinement, interlocutory appeals and writs initiated by the defendant prior to the entry of a final appealable order by the Municipal Court, and representation of the defendant at trial and sentencing.

(c) Indigency. "Indigency" means an individual defendant is unable to pay all or a part of the costs of an attorney as determined exclusively by the Municipal Court, or such other agency as the City may determine pursuant to guidelines and standards acceptable to the City; provided, that the attorney shall promptly notify the Court or the City Attorneys in writing of any situation as it becomes known which might foreseeably affect an indigent defendant's ability to reimburse the City for all or some part of the Attorney's fees under this Contract.

(d) Special Appearance. "Special appearance" means any legal services not within the definition of a "case" including, but not necessarily limited to, legal assistance during investigative stages by the City police or the City Attorneys (i.e. line-ups, interrogations, interviews by police, and physical examinations in which the suspect participates), jail visits, and review hearings on indigent status.

EXHIBIT "A"

2. Term. The above referenced existing "Agreement for Attorney Services Sunnyside Municipal Court – Public Defender" shall continue in effect through December 31, 2011, unless earlier terminated by either party as provided within the existing Agreement. Unless so terminated, or otherwise renegotiated, the existing Agreement shall renew automatically for successive calendar months upon the same terms and conditions until terminated upon thirty (30) days written notice. In the event of termination, the Attorney shall continue representation of any indigent defendants for which Attorney has received appointments prior to the termination date, unless withdrawal is approved by the Municipal Court, and shall be considered fully compensated for such appointments.
3. Report. In accordance with RCW 10.101.050, Attorney hereby agrees to provide the City with an annual report of the hours billed for non-public defense legal services within the previous calendar year, including number and types of private cases, if any. The annual report shall include: (1) The number and type of cases in Attorney's private practice; (2) The number of other public defense contracts, if any; and (3) The total hours billed for non-public defenses cases, if any. The Attorney is not required to provide client or case names or other identifying information, case fee amounts, or hourly billing rates. The annual report shall be provided to the City within thirty (30) days after the last day of each calendar year.
4. Training. In accordance with, RCW 10.101.050, Attorney hereby agrees to attend seven (7) hours of office of public defense approved training at least once a calendar year.
5. Professional Liability Insurance. During the term of the Agreement and any extensions hereof the Attorney shall secure and maintain a policy of comprehensive professional liability insurance with an insurance company licensed to do business in the State of Washington. Said policy shall have limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per claim and aggregate. Written proof of the insurance policy will be supplied to the City upon request.
6. Compensation. Compensation paid by the City to the Attorney shall be in the amount of \$7,029.75 per month during the term of the contract and any renewal. Attorney shall be reimbursed for any expert witness fees which have been approved by the court as necessary in a particular case and for interpreter fees approved by the court.
7. Scope of Services. Legal services for representation beyond filing or perfecting an appeal to Superior Court or for cases of extraordinary complexity shall be negotiated separate from this Contract. In conjunction with this Agreement, the City is also contracting with one (1) other attorney to serve as a primary public defender in the Municipal Court. The two (2) public defender attorneys shall cooperate and coordinate in the substantially equal division of duties for special appearances and in attending arraignments. The two (2) public defender attorneys or firms shall also cooperate and coordinate with the Municipal Court the assignment of cases to the City's public defenders so that the two (2) attorneys are assigned as equal number of cases as feasible. The Attorney shall exercise independent professional judgment with respect to representation of each client and shall perform all legal services in accordance with the professional and ethical standards of the Washington State Bar Association. The Attorney shall at all times comply with the Rules of Professional Conduct (RPC) and all other applicable court rules. The Attorney shall maintain the highest standards of conduct and behavior towards the court, the prosecutor, and all parties. Both parties shall endeavor to comply with the "Washington Defender Association Standards for Public Defense Service", available at <http://www.defensenet.org/resources/publications-1/wda-standards-for-indigent-defense>. Both parties shall endeavor to comply with the proposed and after adopted Sunnyside Municipal Code (SMC) Section 2.42, attached hereto as Attachment "1."
8. Conflict of Interest. In the case of an appointment for which the Attorney cannot provide legal representation due to an ethical conflict, the indigent defendant shall be referred back to the Municipal Court for a new attorney at no charge to the City. The Attorney shall not be required to compensate conflict counsel from the proceeds of this Agreement.

EXHIBIT "A"

The above named parties confirm their agreement to the above terms and conditions of this *Addendum* through their signatures below:

CITY OF SUNNYSIDE,
a Washington Municipal Corporation

By: _____
MARK J. GERVASI,
City Manager

BARRY M. WOODARD
Attorney

Attest:

Deborah A. Estrada,
City Clerk

Approved as to Form:

MENKE JACKSON BEYER
EHLIS & HARPER, LLP
Attorneys for the City of Sunnyside

By: _____