

ORIGINAL

RESOLUTION 2011 - 54

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, APPROVING
AGREEMENT FOR ATTORNEY SERVICES, SUNNYSIDE MUNICIPAL COURT-
PUBLIC DEFENDER WITH GARRISON LAW OFFICES, P.S.**

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

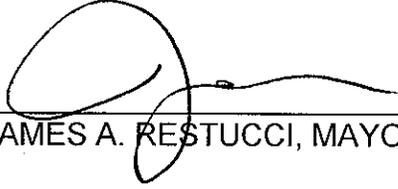
WHEREAS, the City Council of the City of Sunnyside finds and determines that the acceptance of such agreement is in the best interests of residents of the City of Sunnyside and will promote the general health, safety and welfare.

**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 Douglas M. Garrison, 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 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

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

THIS AGREEMENT is made and entered into this ____ day of July, 2011, by and between the CITY OF SUNNYSIDE, a municipal corporation hereafter called "City," and GARRISON LAW OFFICES, P.S., hereafter referred to as "Attorney," for the purpose of providing indigent defense counsel for those defendants accused of misdemeanor and gross misdemeanor offenses arising under the ordinances of the City and laws of the State of Washington which carry the possibility of a jail sentence.

I. Recitals

A. City is a municipal corporation of the State of Washington operating a municipal court pursuant to state law, with City Hall located at 818 East Edison Avenue, Sunnyside, Washington 98944, and Sunnyside Municipal Court located at the Sunnyside Law & Justice Center, 401 Homer Street, Sunnyside, Washington 98944.

B. Attorney is an attorney admitted to the practice of law, and in good standing, in the State of Washington, and is qualified to serve as assigned defense counsel for those defendants qualifying for such assignment in the Sunnyside Municipal Court. Attorney maintains an office at 516 S 7th St, Sunnyside, WA 98944.

C. City and Attorney desire to enter into an Agreement retaining Attorney to provide indigent defense counsel, as assigned by the Sunnyside Municipal Court, for those defendants who qualify for such representation.

II. 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.

EXHIBIT "A"

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.

II. Agreement

WHEREFORE, in consideration of the mutual covenants, conditions and promises herein, the parties agree as follows:

A. Public Defender. Attorney agrees to provide legal representation for those persons charged with misdemeanor or gross misdemeanor violations of City ordinances or state law which carry the possibility of jail sentence, and who are also found by the Sunnyside Municipal Court to be indigent and entitled to court-appointed defense counsel at public expense, and who are assigned by the Sunnyside Municipal Court to Attorney for such representation. Attorney may retain other attorneys to perform the services of this agreement for and on behalf of Attorney, subject to approval of the City Manager or his designee, which retained attorneys shall be qualified to provide, and will provide, legal defense services in accordance with the requirements and standards of this Agreement. Attorney shall be responsible for all administration and assignment of cases to other retained counsel, and shall be solely responsible to compensate such retained counsel.

B. Term of Agreement. This Agreement shall commence upon execution of this Agreement by City and Attorney and 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, this 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; provided, that with respect to cases assigned to Attorney prior to July 1, 2011, the City shall pay the Attorney the sum of \$100.00 per case assigned to the Attorney by the Municipal Court upon case termination, consistent with the prior practice and understanding between the City and Attorney.

C. 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

EXHIBIT "A"

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.

D. 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 Agreement. In conjunction with this Agreement, the City is also contracting with one (1) other attorney to serve as a primarily 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."

E. Independent Contractor. City and Attorney agree and understand that Attorney, and any attorney and administrative staff retained by Attorney, are each considered for all purposes an independent contractor and not an employee of the City. Attorney shall be responsible for payment of all state and federal taxes, assessments and reporting for tax purposes, and any and all salary or other compensation paid to Attorney's employees and other retained counsel.

F. Best Efforts – Availability of Attorney. Attorney will devote best efforts to fulfill the duties of this Agreement, and will make best efforts to advise the Sunnyside Police Department of evenings he will be absent from the jurisdiction or unavailable by phone and will advise the Sunnyside Police Department of any substitute counsel indigents may call during his absence.

G. 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.

H. Costs and Fees Assessed Against Defendants. Any and all payments for reimbursement of court-appointed attorney's fees, as ordered and assessed by the Sunnyside Municipal

EXHIBIT "A"

Court or other court having jurisdiction to hear a City case, shall be payable by defendant directly to the Sunnyside Municipal Court.

I. Expansion of Court Jurisdiction – Contingency. In the event jurisdiction of the Sunnyside Municipal Court is extended to include juvenile misdemeanor offenses, or to cover diversion agreements with Yakima County, it is agreed that the rate of compensation provided in this Agreement shall be subject to renegotiation by the parties.

J. Private Representation. Nothing in this Agreement shall be construed as limiting the ability of Attorney, or Attorney's office, to represent defendants in the Sunnyside Municipal Court who are not eligible for assigned public defender representation, and who may retain Attorney for legal services.

K. Early Termination – Notice. This agreement may be terminated by either party upon sixty (60) days written notice delivered to the other party. Such notice shall be deemed delivered when delivered personally to the other party or when deposited in the United States Mail, postage prepaid, addressed to the other party at such party's last known address of record.

L. Reports to City. 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.

M. 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.

N. 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.

O. Entire Agreement – Modification. This Agreement constitutes the entire agreement of the parties, and shall not be modified except in writing signed by both parties.

IN WITNESS WHEREOF the parties have executed this Contract on the ____ day of _____, 2011.

CITY OF SUNNYSIDE,
a Washington Municipal Corporation

GARRISON LAW OFFICES, P.S.

By: _____
MARK J. GERVASI,
City Manager

DOUGLAS K. GARRISON
Attorney

Attest:

DEBORAH A. ESTRADA,
City Clerk

Approved as to Form:

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

By: _____