

ORIGINAL

RESOLUTION 2011 - 55

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON,
APPROVING A PUBLIC DEFENDER CONTRACT FOR THE
MUNICIPAL COURT WITH RAYMOND G. ALEXANDER**

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 and Raymond G. Alexander have negotiated a Public Defender Contract for the provision of indigent defense services by Alexander for conflict cases; and

WHEREAS, the City Council of the City of Sunnyside finds and determines that the acceptance of such contract 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 "City of Sunnyside Public Defender Contract," a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, by and between the City of Sunnyside and Raymond G. Alexander, 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.



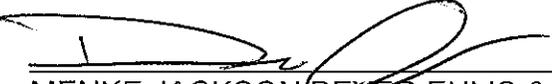
JAMES A. RESTUCCI, MAYOR

ATTEST:



DEBORAH A. ESTRADA, CITY CLERK

APPROVED AS TO FORM:



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

CITY OF SUNNYSIDE PUBLIC DEFENDER CONTRACT

THIS CONTRACT is entered into this ____ day of July, 2011, by and between the CITY OF SUNNYSIDE, a Municipal Corporation of the State of Washington (hereinafter referred to as "City"), and RAYMOND G. ALEXANDER (hereinafter referred to as "Attorney").

1. 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.

2. SCOPE OF SERVICES. Indigent criminal defendants charged or cited by the City who qualify for appointed defense counsel and are deemed to be a conflict for the other public defenders shall be referred to the Attorney on an as needed as available basis as determined by the Attorney and the Municipal Court. The Attorney shall provide legal representation for each of these defendants for the duration of the case, including filing or

perfecting an appeal to the Superior Court. 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. The Attorney shall also be responsible for attending arraignments on an as available basis. The Attorney shall further provide legal services within the definition of "special appearance" and make himself available telephonically for consultation on special appearance matters. 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."

3. TERM OF CONTRACT.

(a) Term. This Contract shall commence on July ____, 2011 and shall continue in effect through December 31, 2011, unless earlier terminated by either party as provided herein. Unless so terminated, or otherwise renegotiated, this Contract 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 they have received appointments prior to the termination date.

(b) Termination. This Contract may be terminated by the City or the Attorney upon sixty (60) days advance written notice to the other party. In the event that the City determines that the Attorney is in material default of this Contract, the City shall provide the Attorney with written notice specifying such default. If such material default is not cured within ten (10) days from the Attorney's receipt of such written notice, this Contract shall be terminated without further notice.

4. 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 Contract.

5. COMPENSATION. During the term of this Contract, the City shall pay the Attorney the sum of \$150.00 per case assigned to the Attorney by the Municipal Court upon case termination. The Attorney shall bill the City at the end of each calendar month for the cases terminated that month. The City shall pay the Attorney within thirty (30) days of receipt of the bill. 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.

6. REPORTING. On or before the last day of each month the Attorney shall present to the City a report specifying the name and case number of each defendant who has been referred to him during that month. In accordance with RCW 10.101.050, Attorney 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.

7. TRAINING. In accordance with, RCW 10.101.050, Attorney agrees to attend seven (7) hours of office of public defense approved training at least once a calendar year.

8. NON-ASSIGNABILITY. No assignment or transfer of this Contract or any interest in this Contract shall be made by either party. Subject to paragraph 4 above, the Attorney's duty of representation shall not be delegated or assigned to any other person, firm, employee or associate without prior written notice to, and oral or written approval of, the City Manager of the City. All employees and associates used by the Attorney shall be at the Attorney's sole expense.

9. PROFESSIONAL LIABILITY INSURANCE. During the term of this Contract 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.

10. INDEMNIFICATION. Attorney shall indemnify and hold the City, its elected officials, officers and employees, harmless from any and all claims, losses or liability, including attorney's fees, whatsoever arising out of the Attorney's performance of obligations pursuant to this Contract, including but not limited to claims arising by reason of accident, injury or death caused to persons or property of any kind occurring by the fault or neglect of the Attorney, his agents, associates, employees or retained contractors. Attorney's duty under this subparagraph to indemnify the City, its elected officials, officers and employees shall not apply to liability caused by or resulting from the sole negligence of the City or its elected officials, officers and employees. In the event of damages caused by or resulting from the concurrent negligence of (1) the City or its elected officials, officers or employees, and (2) Attorney or his agents, associates, employees or retained contractors, Attorney's duty to indemnify the City and its elected officials, officers and employees shall only apply to the extent of the negligence of Attorney or his agents, associates, employees or

retained contractors. ATTORNEY SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITY THAT MAY BE GRANTED UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51, FROM THE REVISED CODE OF WASHINGTON. FURTHER, THE INDEMNIFICATION OBLIGATIONS UNDER THIS CONTRACT SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE TO OR FOR ANY THIRD PARTY UNDER WORKMAN'S COMPENSATION ACTS, DISABILITY BENEFITS ACTS OR OTHER EMPLOYEE BENEFIT ACTS; PROVIDED, ATTORNEY'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS SUBPARAGRAPH EXTENDS ONLY TO CLAIMS AGAINST THE ATTORNEY BY CITY AND DOES NOT INCLUDE, OR EXTEND TO ANY CLAIM BY ATTORNEY'S EMPLOYEES DIRECTLY AGAINST ATTORNEY.

11. INDEPENDENT CONTRACT. The City and the Attorney understand that the Attorney is considered for all purposes an independent contractor and not an employee of the City. The Attorney shall be responsible for payment of all state and federal taxes, assessments and reporting therefore.

12. ENTIRE AGREEMENT. This Contract contains the entire agreement between the parties and may not be enlarged, modified or altered except in a writing signed by both parties.

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

CITY OF SUNNYSIDE,
a Washington Municipal Corporation

By: _____
MARK J. GERVASI,
City Manager

RAYMOND G. ALEXANDER
Attorney

Attest:

DEBORAH A. ESTRADA,
City Clerk

EXHIBIT "A"

Approved as to Form:

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

By: _____