

**RESOLUTION 2011 - 74**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF SUNNYSIDE, WASHINGTON, APPROVING  
PROFESSIONAL SERVICES AGREEMENT FOR  
HEARING EXAMINER PRO TEM  
(Patrick D. Spurgin)**

**WHEREAS**, the City of Sunnyside has previously entered into an Agreement for Professional Services Agreement for Hearing Examiner with Gary M. Cuillier, an independent contractor; and

**WHEREAS**, the City finds that it needs to have a Hearing Examiner Pro Tem because of a conflict of interest for the current Hearing Examiner, Gary Cuillier; and

**WHEREAS**, the City Council finds and determines that an agreement for such services should be approved for services to be rendered for November 7, 2011 to December 31, 2013; and

**WHEREAS**, the City Council finds and determines that such approval 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.** The "Professional Services Agreement for Hearing Examiner Pro Tem," a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, by and between the City of Sunnyside and Patrick D. Spurgin, is hereby approved; and the City Manager is hereby authorized to execute such agreement for and on behalf of the City of Sunnyside. Performance of the agreement as and from November 7, 2011 is hereby ratified and approved.

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

**PASSED** this 7<sup>th</sup> day of November, 2011.

  
\_\_\_\_\_  
JAMES RESTUCCI, MAYOR

ATTEST:

  
\_\_\_\_\_  
DELILAH SAENZ, CITY CLERK

APPROVED AS TO FORM:

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

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
HEARING EXAMINER PRO TEM**

THIS AGREEMENT is made between CITY OF SUNNYSIDE, a municipal corporation, and PATRICK D. SPURGIN, an individual, for the uses and purposes set forth below.

**I. Recitals**

A. CITY OF SUNNYSIDE, hereafter called "City," is a municipal corporation of the State of Washington with City Hall located at 818 East Edison Avenue, Sunnyside, Washington 98944.

B. PATRICK D. SPURGIN, hereafter called "Examiner," is an attorney duly licensed and in good standing with the Washington State Bar Association, with principal offices at 411 N. 2<sup>nd</sup> Street, Yakima, Washington 98901.

C. By Ordinance No. 2152 adopted November 27, 2006 by the City Council, the City has adopted a hearing examiner system, and must obtain professional services of a person trained and qualified to conduct public hearings and prepare the record thereof; prepare findings of fact, conclusions and final decisions or recommendations to the City Council, as appropriate, and such person should have knowledge and experience in the procedures involved in conducting land use regulatory hearings and the ability to make and prepare findings and conclusions relating to such matters in a judicial and timely manner.

D. Examiner is an individual qualified to perform the services of Hearing Examiner, and City and Examiner desire to enter into this Agreement for the provision of such professional services.

**II. Agreement**

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

1. Scope of Services. Examiner shall preside over all matters submitted to him pursuant to Chapter 2.46 of the Sunnyside Municipal Code (SMC), as well as other matters submitted as authorized by the municipal code or applicable law. Examiner acknowledges that he has received a copy of Chapter 2.46 SMC, read it, and is familiar with the types of applications and appeals for which he shall be responsible to receive and examine available information, conduct public hearings, prepare a record thereof, and enter findings of fact and conclusions based upon those facts. Each final decision of the Examiner shall be in writing and shall include findings and conclusions, based on the record, to support such decision. Such findings and conclusions shall also

EXHIBIT "A"

set forth the manner in which the decision would carry out and conform to the City's comprehensive plan and the City's development regulations. Each final decision, unless the applicant and the Examiner agree to a longer period in writing, shall be rendered within ten (10) working days following conclusion of all testimony and hearings.

2. Term. The term of this Agreement shall be for the three year period commencing November 7, 2011 and terminating December 31, 2013, unless sooner terminated as hereinafter provided.

3. Compensation. The City shall pay Examiner the sum of \$140.00 per hour, which shall be full compensation for services rendered, including all professional services, materials, supplies, equipment, and necessary incidentals. Time spent by Examiner in travel related to the performance of Examiner's services herein shall be compensated at the rate of \$70.00 per hour. By the last day of each month the Examiner shall provide an itemized statement to the City for services rendered during that month. Payments shall be made on or about the 15<sup>th</sup> day of the following month. The total compensation shall not exceed \$6,000.00 per year without prior consent of the City Manager.

4. Independent Contractor. The Examiner is, for all purposes arising out of this Agreement, an independent contractor, and he shall not be deemed as employee of the City. The Examiner shall be in exclusive control of the means and methods by which he shall perform the requirements of this Agreement, and he shall not be subject to control or supervision by the City, except as specified herein.

5. Termination. If the Examiner shall choose to resign prior to the termination date of this Agreement, he shall first give written notice not less than 90 days prior to the date of his resignation. The City may terminate this contract for cause or without cause upon giving the Examiner 30 days written notice. For purposes of this paragraph, "cause" shall include, but not be limited to, a determination by the City Manager that the Examiner is not giving due consideration to proper procedures or is not conducting hearings in a prudent manner, giving due regard to the Appearance of Fairness Doctrine, laws regarding conflict of interest, and/or other laws, procedures and regulations dealing with the subject matter under consideration.

6. Indemnification. The City, to the extent of its existing coverage by its liability insurer for acts and omissions of public officials, shall indemnify, defend and hold the Examiner harmless from all liability, loss or damage, including costs of defense that he may suffer as a result of claims, demands, actions, damages, costs or judgments which result from any negligent or other actions or omissions not excluded by such coverage.

EXHIBIT "A"

7. Files and Records. At the termination of this Agreement, Examiner shall release to any successor, without cost, all files, records, and other materials relating to all matters then pending or previously before him.

8. Entire Agreement. This Agreement constitutes the entire agreement between the parties and shall not be amended except in writing signed by both parties.

WHEREFORE, this Agreement is executed this \_\_\_\_\_ day of November, 2011.

CITY OF SUNNYSIDE

HEARING EXAMINER PRO TEM

\_\_\_\_\_  
Mark G. Gervasi, City Manager

\_\_\_\_\_  
Patrick D. Spurgin

ATTEST:

\_\_\_\_\_  
Delilah Saenz, City Clerk

APPROVED AS TO FORM:

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Menke Jackson Beyer Ehlis & Harper LLP  
Attorneys at Law