

RESOLUTION 2011 - 78

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, AUTHORIZING THE CITY MANAGER
TO ENTER INTO A REPRESENTATION AND FEE AGREEMENT WITH
MENKE JACKSON BEYER EHLIS & HARPER, LLP**

WHEREAS, the City currently contracts with the firm of Menke Jackson Beyer Ehlis & Harper, LLP, hereinafter referred to as "Firm;" and

WHEREAS, the City and the Firm have negotiated a new fee agreement reducing the fee for general counsel services from \$12,000 per month to \$9,000 per month; and

WHEREAS, the City Manager has recommended that the City Council approve this new Representation and Fee Agreement effective December 1, 2011; 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 Representation and Fee Agreement attached hereto as Exhibit "A" and the City Manager is hereby authorized to execute such agreement for and on behalf of the City of Sunnyside and to take all actions reasonable and necessary to administer performance of such agreement.

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

PASSED this 28th day of November, 2011.



NICK PAULAKIS, DEPUTY MAYOR

ATTEST:



DELILAH SAENZ, CITY CLERK

APPROVED AS TO FORM:



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

EXHIBIT "A"

REPRESENTATION AND FEE AGREEMENT

The parties to this Agreement are the law firm of Menke Jackson Beyer Ehlis & Harper, LLP, located at 807 North 39th Avenue, Yakima, Washington, hereinafter referred to as "FIRM," and CITY OF SUNNYSIDE, located at 818 East Edison Avenue, Sunnyside Washington, hereinafter referred to as "CITY." Whereas, the CITY is desirous of retaining the FIRM for the purposes of advice, counseling, and representation pertaining to matters specified below.

THE PARTIES agree to the following terms and conditions:

ARTICLE I - STATEMENT OF WORK

The FIRM shall represent the CITY in all legal proceedings (excluding criminal and bond and levy lid issues and related matters) involving the CITY as directed by the City Manager or Deputy City Manager. Work will be coordinated by the City Manager or Deputy City Manager with the FIRM through the General Counsel (as designated below) and will be generally performed and administered as follows:

- A. General Counsel Services: General Counsel services will include, but not be limited to, drafting, preparation and review of ordinances and resolutions, contracts, deeds, and legal documents and instruments, providing legal counsel regarding public records requests, attendance at City Council meetings, attendance at Planning Commission meetings when requested by the City Manager or Deputy City Manager, attendance at meetings in preparation for City Council and Planning Commission meetings and rendering of legal opinions. General Counsel services shall also include monitoring pre-defense or litigation in which the CITY's insurance pool is providing legal counsel for **all** claims or potential claims, but shall not include other litigation, whether currently pending or threatened. In addition, General Counsel services shall include legal counsel for periodic personnel, labor, land use and code enforcement issues not involving litigation, whether currently pending or threatened.
 1. The CITY has designated SCOTT BEYER, a Partner with the FIRM, as General Counsel. Although the CITY has designated a General Counsel, other Partners and Associates of the FIRM will provide General Counsel and other legal services to the City, and the City Manager and Deputy City Manager may also contact such Partners and Associates directly regarding such matters.

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2. It is the intent of this Agreement that accept in unusual circumstances or at the direction the City Manager or Deputy City Manager, requests for General Counsel services and other legal services shall be made through the City Manager or Deputy City Manager. Examples of unusual circumstances include a complaint directed at both the City Manager and Deputy City Manager or an emergency when both the City Manager and Deputy City Manager are unavailable.
- B. Other Legal Services: Other legal services shall include land use, personnel, labor, litigation and other legal services outside the General Counsel services described herein, including:
1. Specific matters either in litigation or involving the threat of litigation, for example, civil proceedings administrative hearings, unfair labor practices, grievance arbitrations, mediations, interest arbitrations, personnel, and land use proceedings;
 2. Labor negotiations;
 3. Drafting of extensive changes in the Sunnyside Municipal Code;
 4. Providing services that are not normally considered legal services that are normally provided by City staff; and
 5. Providing legal opinions to third parties for City financing or contracts.

If the City Manager or Deputy City Manager and firm consider a matter to be other legal services, it shall be assigned a separate billing number by the Firm and shall provide a separate detailed billing for such services. In the absence of a separate billing number and billing other legal services shall be considered General Counsel services.

ARTICLE II – FEES AND COSTS

The CITY agrees to pay the FIRM on the following basis:

- A. The CITY agrees to pay the FIRM the sum of Nine thousand dollars (\$9,000.00) per month for General Counsel services. This amount is a flat fee and not a fee advancement. This flat fee is predicated on the basis of an average hourly rate of one hundred sixty-five dollars

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(\$165.00) per hour for fifty four and one-half (54.5) hours per month. Although neither party shall be entitled to reimbursement if the amount of hours exceeds or is less than this number of hours, the parties shall evaluate and reassess this flat fee at least quarterly and adjust the flat fee periodically by letter exchanged by the City Manager and General Counsel.

- B. For other legal services the CITY agrees to pay the FIRM the sum of one hundred seventy-five dollars (\$175.00) per hour for services of Partners, one hundred sixty dollars (\$160.00) per hour for services of Associate Attorneys, ninety-five dollars (\$95.00) per hour for the services of Legal Interns, and fifty-five dollars (\$55.00) per hour for support staff. Hours are calculated in quarter-hour increments.
- C. In addition to the fees payable for General Counsel services and other legal services, the CITY shall reimburse the FIRM for any and all costs incurred by the FIRM associated with providing representation to the CITY, including but not limited to meals, lodging, mileage, long distance telephone charges, photocopying charges, facsimile charges, filing fees, deposition transcription charges, on-line research, arbitrator costs, and similar costs. The FIRM shall not be reimbursed for mileage for attending Council and Planning Commission meetings or meetings in preparation for such meetings as part of General Counsel services. The CITY agrees to pay the hourly rate for travel time, except for attending Council and Planning Commission meetings or meetings in preparation for such meetings as part of General Counsel services. Mileage will be charged at the current Internal Revenue Service rate per mile.

ARTICLE III - TERMS OF PAYMENT

The CITY shall pay the FIRM at its 1st regularly scheduled Council meeting of each month (2nd Monday of the month) provided the billing for the previous month is received by Tuesday, prior to the 1st Monday of the month, for voucher/warrant processing. If billing is not received as indicated above, it will be paid at the next regularly scheduled meeting.

ARTICLE IV - TERM OF AGREEMENT

This Agreement shall become effective **December 1, 2011**, and shall terminate all prior Fee Agreements between CITY and FIRM, except the Fee Agreement regarding bargaining units consisting of the IAFF Fire Supervisors and the Sunnyside Professional Employees Association (SPEA), and provided such termination shall not affect fees and costs incurred prior to such date. This

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Agreement shall be subject to termination by either party upon fifteen (15) days written notice.

Dated this 28th day of November, 2011, the parties confirm their agreement to the above terms and conditions through their representative signatures below:

CITY OF SUNNYSIDE
(CITY)

MENKE JACKSON BEYER
EHLIS & HARPER, LLP
(FIRM)

Mark Gervasi
City Manager

G. SCOTT BEYER
Partner

ATTEST:

Delilah Saenz
City Clerk