

ORIGINAL

RESOLUTION 2009-9

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, APPROVING
AGREEMENT FOR PUBLIC DEFENDER SERVICES –
SUNNYSIDE MUNICIPAL COURT (Barry M. Woodard)
(2009 – 2010)**

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 the provision of such legal services; and


WHEREAS, the City Council of the City of Sunnyside finds and determines that 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 Barry M. Woodard, is hereby approved; and the City Manager is hereby authorized to execute such agreement for and on behalf of the City of Sunnyside, and the application and effect of such agreement as and from January 1, 2009, is hereby ratified and approved.

SECTION 2. This Resolution shall be effective upon passage, approval and publication as required by law.

PASSED this 26th day of January, 2009.



PABLO GARCIA, MAYOR

ATTEST:


DEBORAH A. ESTRADA, CITY CLERK

APPROVED AS TO FORM:


MARK A. KUNKLER, CITY ATTORNEY

EXHIBIT "A"

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

(January 1, 2009 through December 31, 2010)

THIS AGREEMENT is made and entered into this 12th day of January, 2009, 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," 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 6 South 2nd Street, Suite 201, Yakima, Washington 98901.

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. Agreement

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

1. 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.

EXHIBIT "A"

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.

2. Term of Agreement. The initial term of this Agreement shall commence January 1, 2009 and terminate December 31, 2010. It is further understood and agreed that within 90 days prior to the end of said term, the Agreement may be reviewed with regard to compensation paid to Attorney for services and may be renewed on terms acceptable to both parties.

3. Compensation. Compensation paid by the City to Attorney shall be in the amount of \$6,695.00 per month for each month of professional legal services provided to defendants assigned to Attorney for public defender representation. Such amount is subject to increase on January 1, 2010 in an amount equal to five percent (5%).

4. 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.

5. 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.

6. Conflict of Interest. Attorney shall not be required to represent individuals if such representation would result in a conflict of interest with the Attorney's existing clients.

7. Scheduling of Cases. Attorney and City agree and understand that Attorney's assigned defense cases will generally be scheduled during the normal dockets of the Sunnyside Municipal Court on each Tuesday of each month. Jury trials are subject to scheduling on an individual basis in accordance with the calendars of the court, prosecutor and Attorney.

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

EXHIBIT "A"

9. 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.

10. 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.

11. 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.

12. Reports to City. Attorney shall provide a written report to City each quarter (on or before April 30, July 31, October 31, and January 31) of each year, with first quarterly report due on or before April 30, 2009. The written report shall include the number of public defender cases referred to Attorney and the estimated cost for processing each case by Attorney and his staff.

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

WHEREFORE, this Agreement is deemed executed on the date first referenced above.

CITY OF SUNNYSIDE

ATTORNEY

By: Eric C. Swansen
Eric C. Swansen, City Manager

By: Barry M. Woodard
Barry M. Woodard

ATTEST:

Deborah A. Estrada, City Clerk

APPROVED AS TO FORM:

Mark Kunkler, City Attorney