

City of Lynden
Contract for Land Use Hearing Examiner Services

This Agreement (“Agreement”) is entered into this _____ day of _____, 2021 between the City of Lynden, a Washington municipal corporation (“City”), and Whatcom Law Group, P.S. (“WLG”), a professional services corporation, (together, the “Parties”), for the purpose of providing the Land Use Hearing Examiner services outlined herein, commencing the _____ day of _____, 2021.

WHEREAS, WLG is in the business of providing legal services; and

WHEREAS, the City desires to contract with WLG for the provision of land use hearing examiner services, and WLG agrees to contract with the City for same;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the Parties as follows:

TERMS

1. Services. WLG agrees to provide the City with the following services:

- a. Fulfill all the functions of Hearing Examiner for the City as set forth in the Lynden Municipal Code's Ordinance 1615, pursuant to any applicable rules of procedure approved by the City Council.
- b. Cooperate with the City's efforts to respond to public record requests in identifying responsive records and providing such records to City staff or providing the City with an exemption log that identifies clearly all the records that were not provided, either in whole or in part, together with an explanation as to why the record was withheld.
- c. Actively avoid *ex-parte* contact with any applicant, opponent, or appellant, as well as avoid engagement on any matters that could result in an actual, potential, or perceived conflict of interest or its ability to fulfill this Agreement.
- d. Provide feedback to the City on issues with the process or the code and their implementation.

2. Designation of Land Use Hearing Examiner. Rajeev D. Majumdar, a partner at WLG, is hereby designated as the Hearing Examiner. Roger L. Ellingson, a partner at WLG, shall serve as Hearing Examiner *pro tem* at such times as Mr. Majumdar is unavailable to serve as Hearing Examiner. In the event Mr. Majumdar and Mr. Ellingson are both unavailable to serve as Hearing Examiner in a given matter, WLG will assist the City in identifying another qualified Hearing Examiner *pro tem*.

3. Clerical Support. To support WLG’s provision of land use hearing examiner services, the City agrees to complete the following tasks free of charge:

- a. Deliver a complete and up-to-date case file including all correspondence, exhibits, and a written staff report(s) to the Hearing Examiner at least ten (10) days prior to hearing, whenever possible, as well as maps and such other exhibits as may be necessary regarding each matter to be heard.
- b. Make all required copies of relevant correspondence, notices and hearing exhibits, keep and maintain all official files and records of the hearings, perform all other activities necessary to administratively process said material, and provide them to the Hearing Examiner as needed, including current updates up to the time of each hearing.
- c. Schedule all hearings after conferring with Hearing Examiner's availability.
- d. Send out and/or publish public notices of hearings.
- e. Mail written Findings, Conclusions, and Recommendations or Decisions and any notices of appeal rights.
- f. Respond to public records requests when addressed to Hearing Examiner, involving Hearing Examiner, or related to Hearing Examiner's cases or duties herein.
- g. Provide support for responses to public or media inquiries or requests referred directly to the Hearing Examiner.
- h. Furnish a hearing room, speaking system, and an audio/video recording system. The City shall make that recording available to the Hearing Examiner to review online within 12 hours of the hearing.
- i. Identify, advise, and provide copies to the Hearing Examiner of any changes or enactments to all pertinent Ordinances, Resolutions, and Policies as well as applicable and current State/Federal Statutes and Administrative Codes.

4. Fees. In consideration for the services described in Section 1, the City agrees to pay WLG for such services as follows:

- a. Flat rate reimbursement of \$1,800.00 for each appeal hearing. This flat rate fee shall include up to 9 hours of attorney time as well as any support, travel time, and mileage.
- b. flat rate reimbursement of \$1,400.00 for each hearing that does not involve an appeal. This flat rate fee shall include up to 7 hours of attorney time as well as any support, travel time, and mileage.
- c. Hours worked in excess of the hours included in the flat rate fees, other services requested by the City not contemplated by any contract, or for administrative matters with the City, shall be reimbursed at the rate of \$200.00 per hour. Rates will be billed

in 1/10th of an hour increments, but never be less than 2/10ths of an hour on any given day.

- d. No additional travel time shall be billed.
- e. No additional support staff time shall be billed.
- f. The City shall reimburse expenses incurred in the course of carrying out the duties of Hearing Examiner, including but not limited to postage and copies.

5. Billing. WLG shall the City for services provided on a monthly basis. All invoices shall indicate thereon the rate and item or matter. Where fees are billed pursuant to §4(c) the amount of time and the item or matter on which such time was spent will appear on the invoice (broken down to the nearest 1/10th of the hour). The City shall tender payment for invoices within thirty (30) days after receipt by the City.

6. Relationship of Parties. The Parties intend that this Agreement shall create an independent contractor relationship between WLG and the City. WLG shall not be an agent, employee, servant, or representative of the City for any purpose whatsoever, and no employee of WLG will be entitled to any benefits of City employment. WLG will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants and/or sub-contractors during the term of this Agreement.

7. Term. WLG shall provide the services described in Section 1 from the effective date of this Agreement through December 31, 2024; provided that, this Agreement shall be automatically renewed for up to two (2) additional three-year terms, unless either party provides the other with six (6) months prior written notice that it wants the Agreement to expire at the end of the term. Notwithstanding the foregoing, the fees established in Section 4 will be adjusted based on the average cost of living adjustment (“COLA”) received by City non-represented employees during any present or future term, commencing with any 2022 COLA so received.

8. Termination.

- a. Termination Upon Party’s Option. Either Party shall have the option to terminate this Agreement at any time. Termination shall be effective upon ninety (90) days written notice to the other party.
- b. Termination for Cause. If WLG refuses or fails to provide the services described in Section 1, or to complete such work in a manner unsatisfactory to the City, then the City may, by written notice to WLG, give notice of its intention to terminate this Agreement. After such notice, WLG shall have twenty-one (21) days to cure, to the satisfaction of the City or its representative. If WLG fails to cure to the satisfaction of the City, the City shall send WLG a written termination letter which shall be effective upon deposit in the United States mail to WLG’s address as stated below.

- c. Rights Upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by WLG to the effective date of termination, as described in the final invoice to the City.
- d. Renewal. If the date of termination of this Agreement passes without the execution of a similar contract by the Parties that renews the Agreement herein and if, in that event, the parties continue to perform according to this contract's terms, then the terms of this Agreement shall control the duties and obligations of the parties until they execute a new written agreement.

9. Nondiscrimination. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, WLG, its subcontractors or any person acting on behalf of WLG shall not, by reason of race, religion, color, sex, marital status, national origin or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

10. Compliance with Laws. In the performance of work under this Agreement, WLG shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to WLG's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

11. Assignment and Subcontracting. WLG shall not assign or subcontract any portion of the services described in Section 1 without the prior written consent of the City.

12. Indemnification/Hold Harmless. To the extent permitted by law, the City agrees to hold harmless and indemnify WLG and its employees from and against all claims, suits, actions, and costs arising from acts or omissions on the part of the City or WLG in the good faith performance of its duties under the terms of this Agreement.

13. Malpractice Insurance. WLG shall furnish to the City and file with the City Clerk and at all times during the existence of this Agreement, maintain in full force and effect, at its own cost and expense, a professional malpractice insurance policy, with a minimum liability of \$1,000,000 per occurrence/\$2,000,000 aggregate. Failure to maintain coverage with the limits provided herein shall be a material breach of this Agreement and cause for termination at any time. A policy naming Mr. Majumdar, among other named in the policy, shall be considered compliance with this provision. A Certificate of Insurance containing the aforementioned minimum limits shall be provided to the City prior to the signing of this Agreement. Written notice of cancellation or reduction in coverage shall be delivered to the City thirty (30) days in advance of the effective date thereof. Any company from which said professional malpractice insurance is obtained shall be approved by the state insurance commissioner pursuant to Title 48 RCW, and shall have at least an A or A+ Best Rating.

14. Written Notice. Communication between WLG and the City shall be addressed to the regular place of business of each party.

In the case of WLG, all communications shall be sent to:

Rajeev D. Majumdar
Whatcom Law Group, P.S.
P.O. Box 1258
Blaine, WA 98231-1258

In the case of the City, all communications shall be sent to:

City of Lynden,
City Clerk
323 Front Street,
Lynden, WA 98264.

15. Governing Law. This Agreement shall be governed by the laws of the State of Washington.

16. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

17. Remedies for Breach. All remedies available in law and equity shall be available in the event of a breach of this Agreement. In the event legal action is initiated by either Party against the other, the prevailing party shall be entitled, in addition to all other amounts to which it is otherwise entitled by this Agreement, to its reasonable attorney's fees and costs, including those incurred on appeal.

18. Venue. This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually agreed that this Agreement shall be governed by the laws of the State of Washington and that any action in law or equity concerning this Agreement shall be instituted and maintained only in the Whatcom County Superior Court, Bellingham, Washington.

19. Complete Agreement. This Agreement constitutes the entire agreement between the City and WLJ. This Agreement may be modified in writing only, upon mutual agreement of the Parties.

In Witness Whereof, the parties enter into this Agreement, mutually agree on above terms, are authorized to execute this Agreement and the parties have executed this Agreement on the day and year indicated.

WHATCOM LAW GROUP, P.S.

CITY OF LYNDEN

Rajeev D. Majumdar
Managing Partner

Scott Korthuis
Mayor

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Scott Korthuis is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Lynden to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

NOTARY PUBLIC in and for the State of WA. My
commission expires _____.

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Rajeev Majumdar signed this instrument and acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it for Whatcom Law Group, P.S. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

NOTARY PUBLIC in and for the State of WA. My
commission expires _____