

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT is entered into this ____ day of _____, 2020, by and between the City of Lynden (“City”), a municipal corporation incorporated under the laws of the State of Washington, and Carmichael Clark, P.S. (“CC”), a professional service corporation incorporated under the laws of the State of Washington.

WHEREAS, the City has a regular and ongoing need for a variety of legal services as described herein; and

WHEREAS, CC provides the kind and nature of legal services as the City needs on a regular basis; and

WHEREAS, the parties believe that a contractual relationship for said legal services will be mutually beneficial;

NOW, THEREFORE, BE IT AGREED as followed:

- 1. Scope of Work.** CC shall provide legal services to the City as described in Exhibit A to this Agreement.
- 2. Designation of City Attorney.** Robert Carmichael, a shareholder of CC, is hereby designated as the City Attorney. As City Attorney, Mr. Carmichael shall be responsible for providing and/or overseeing the provision of legal services described in Exhibit A. Mr. Carmichael shall be consulted prior to any decision by the City to retain or use legal counsel other than CC; provided that, the City shall retain full and final authority to retain and select additional legal services from attorneys or law firms other than CC when the City determines it is in its best interest to do so.
- 3. Payment.** Upon entry of this Agreement, CC shall provide legal services to the City based on the date ranges and hourly rates set forth in Exhibit B.
- 4. Duration.** Unless otherwise terminated as set forth in Section 5, this Agreement shall remain in effect for a term of two (2) years. If the City continues to utilize CC for legal services after the term of this Agreement expires, the provision of said services shall be governed by the terms of this Agreement until such time as the relationship is terminated or until a new Agreement is entered.

Termination. (A) With cause. This Agreement may be terminated at any time for “just cause,” by either party by providing written notice of said termination to the other party at least ten (10) days prior to the effective date of termination. **(B) Without cause.** This Agreement may be terminated at any time by either party without cause by providing written notice of said termination to the other party at least ninety (90) days prior to the effective date of termination.

5. **Billing.** CC shall submit monthly invoices to the City for actual time spent in furtherance of providing the services described in Exhibit A since the date of the last billing. Time spent will be accounted for in increments of 1/10th of an hour. If the City objects to any portion of the invoice, it shall so notify CC within fifteen (15) days from the date of receipt of the invoice, give reasons for the objection, and pay that portion of the invoice not in dispute. The City shall pay an additional charge of one percent (1%) of the amount of the invoice per month for any payment received by CC more than sixty (60) days from receipt of the invoice; except that, the City shall not be obligated to pay any such additional charge on billings or portions of billings that are being disputed or that are not agreed upon by both parties.
6. **Out-of-pocket expenses.** Costs and expenses associated with in-house photocopies, faxes, local telephone charges, or in-county mileage charges, will be absorbed within the hourly rate and will not be billed to the City. However, other out-of-pocket expenses reasonably incurred in the course of providing legal services hereunder shall be charged to the City and will be itemized on monthly invoices, including without limitation: messenger services, overnight delivery charges, outside photocopying and printing costs, filing fees, deposition and transcript costs, witness fees, charges made by experts and consultants, long distance telephone charges, out-of-county mileage charges, and other like expenses. In all instances, CC shall notify the City prior to incurring any expected significant out-of-pocket expenses.
7. **Relationship of the parties.** The parties intend that an independent contractual relationship will be created by this Agreement. No shareholder, agent, employee, servant or representative of CC shall be deemed to be an employee or servant of the City.
8. **Assignment/subcontracting.** CC shall not assign or subcontract any portion of the work described in Exhibit A without the prior written consent of the City. A change in the firm name only shall not be considered an assignment or affect this Agreement.
9. **Malpractice Insurance.** CC 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 the individual CC members, among others named in the policy, shall be considered in 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 policy is obtained shall be approved by the state insurance commissioner pursuant to Title 48

RCW, and shall have at least an A or an A+ Best Rating.

- 10. Professional Responsibility.** CC represents that the services provided hereunder shall be performed in a manner consistent with that level of care and skill ordinarily exercised by attorneys in similar endeavors under similar circumstances. No other representations to the City, express or implied, and no warranty or guarantee is included or intended in this Agreement.
- 11. Governing Law.** This Agreement shall be governed by the laws of the State of Washington.
- 12. Complete Agreement.** This Agreement constitutes the entire agreement between the City and CC. This Agreement may be modified in writing only, upon mutual agreement of the parties.

CITY OF LYNDEN

CARMICHAEL CLARK, PS

Scott Korthius, Mayor

Robert Carmichael, Shareholder

EXHIBIT A

SCOPE OF LEGAL SERVICES

Subject to the proviso in Section 2 of the Agreement, CC shall provide the City with all services necessary to meet its needs for legal counsel and representation. Said services shall include without limitation, providing legal advice to the City Council, Mayor, City Administrator, Planning Commission, and other City officers and employees, representing the City in civil and administrative litigation, representing the City in negotiations with outside entities, reviewing and drafting contracts and ordinances as requested, and prosecution of criminal and traffic offenses.

Robert Carmichael shall act as City Attorney and shall perform the functions and duties generally associated with the position of City Attorney for the City. It is understood that Mr. Carmichael's designation as City Attorney is a material part of this Agreement and that this designation includes ultimate responsibility for carrying out the functions of the City Attorney. Mr. Carmichael will also have primary responsibility for personal attendance at all regular City Council meetings and those special City Council meetings, Planning Commission meetings and other meetings of City officers and employees as requested, but may delegate responsibility for specific tasks, or attendance at specific meetings as appropriate, to other attorneys at CC.

The parties anticipate that other attorneys at CC will also provide legal services to the City, in lieu of or in addition to Mr. Carmichael. CC will seek to provide the City with timely access to CC attorneys with expertise suited to the particular legal matter at hand. For example, the parties anticipate that CC will assign responsibility for the City's municipal criminal and traffic prosecution to Greg Greenan or similarly qualified attorney. Similarly, the parties anticipate that Catherine Moore will be available in addition to Mr. Carmichael on civil municipal issues. In the event that the necessary legal expertise is not available at CC for a particular matter, CC shall so advise the City and shall assist the City in locating outside legal counsel. Under all circumstances, the City shall retain full and final decision-making authority in selecting and retaining outside legal counsel.

EXHIBIT B

HOURLY RATE SCHEDULE - LYNDEN

COMMENCING JANUARY 16, 2020

	<u>Time Frame / Rate</u>		
	Current	Jan. 16, 2020 – Jan. 15, 2021	Jan. 16, 2021 - Contract End Date
For partner attorneys work on civil matters:			
Bob Carmichael			
Bryan Page	\$185.00	\$190.00	\$195.00
Greg Greenan			
 Bob Carmichael (or other attorney) <i>(For regular City Council meetings only)</i>	\$160.00	\$160.00	\$165.00
For municipal court prosecution:			
Greg Greenan	\$145.00	\$150.00	\$155.00
Others			
For associate attorney work on civil matters:			
Catherine Moore, Lisa Keeler, Colin Morrow and other associates	\$170.00	\$175.00	\$180.00
For paralegal work:	\$80.00	\$85.00	\$85.00