

**City of Lynden  
Public Defender Contract for  
Indigent Criminal Defense Services**

This Agreement for Indigent Criminal Defense Services (“Agreement”) shall take effect on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”) by and between the City of Lynden, a municipal corporation, hereinafter referred to as the “City,” and attorney Jason Smith, North County Public Defense, hereinafter referred to as the “Contractor,” collectively referred to as “Parties,” is for the purpose of providing attorney services outlined herein.

The Parties agree as follows:

**Section I – Services:**

Contractor agrees to provide all professional services necessary of indigent defendants charged with misdemeanors and gross misdemeanors in the City of Lynden, Washington. Services include:

- 1) Attending regular special sessions of the Lynden Municipal Court for all assigned defendants, pursuant to the Lynden Municipal Court calendar;
- 2) Timely contacting defendants if the defendant is incarcerated;
- 3) Appearing in Whatcom County Jail for hearings in the jail when necessary and as determined by the Lynden Municipal Court;
- 4) Having available an all-hours pager or phone number to respond to calls;
- 5) Meeting with clients as appropriate;
- 6) Representing indigent defendants in appeals to the Whatcom County Superior Court except when representing the same defendant during the trial; and
- 7) Performing services consistent with the standard of practice within the Lynden community.

The Contractor agrees to provide professional legal services for all Lynden Municipal Court cases that have been determined to be within the scope of indigent defense. Cases shall be assigned to the Contractor at the discretion of the Lynden Municipal Court Judge. The maximum number of cases which the Contractor will be assigned shall be consistent with the Standards for Indigent Defense adopted by the Washington Supreme Court, and as hereafter amended, and which allows the Contractor the ability to give each client the time and effort necessary to ensure effective representation.

Contractor agrees that at least one qualified primary attorney from Contractor’s office shall be assigned to provide all the services outlined herein; provided that, nothing shall prevent additional attorneys in Contractor’s office from being assigned to assist said primary attorney. The identity of the primary attorney shall be disclosed to the City within one week of commencement of this Agreement.

**Section II – Consideration**

In consideration for the services described above, the City agrees to pay the Contractor four thousand dollars (\$4,000.00), paid monthly, for such services described in this Agreement. for each full month in which such

services are provided. Compensation for services provided for a partial month shall be prorated. Contractor shall send an invoice for such payment each month. The City of Lynden, Finance Department, must receive invoices by the 5<sup>th</sup> of each month (or the following Monday if the 5<sup>th</sup> falls on a weekend day) for processing in the current month's run. The Finance Department is required to seek City Council approval to pay invoices during the second City Council meeting of the month (third Monday) before payment can be rendered.

### **Section III – Review and Supervision**

The City reserves the right to assure that indigent clients referred to the Contractor hereunder receive proper representation and further reserves the right to review and investigate the quality of such representation and require the Contractor to assist in any such review or investigation. Nothing in this section shall be construed or applied in any manner that may violate the confidentiality of any privileged information.

### **Section IV – Maintenance of Office**

The Contractor shall be responsible for (1) access to an office that accommodates confidential meetings with clients, (2) a postal address, and (3) adequate telephone services to ensure prompt responses to client contacts to provide adequate legal representation as required by this Agreement.

### **Section V – Licensing**

The Contractor agrees to remain licensed to practice law in the State of Washington during the term of any criminal defense contract with the City, and will further, at all times pertinent thereto, abide by the code of professional responsibility.

### **Section VI – Standards for Indigent Defense Services**

The Contractor agrees to perform services consistent with the requirements contained in the Standards for Indigent Defense Services adopted by the Washington Supreme Court and as hereafter amended.

### **Section VII – Malpractice Insurance**

The Contractor shall furnish to the City and file with the City Clerk and at all times during the existence of this Contract, maintain in full force and effect, at its own cost and expense, a professional malpractice insurance policy, each 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 Contract and cause for termination at any time. A policy naming the individual Contractor, 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 Contract. 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.

### **Section VIII – Assignment or Subcontracting**

The Contractor shall not assign or subcontract any case provided under the terms of this Agreement to an attorney outside of Contractor's office without obtaining prior written approval from the City; except that, from time to time the Contractor may subcontract with another qualified attorney from an approved list of other attorneys to assist with the services provided under the terms of this Agreement. Should Contractor

desire to make use of this provision, Contractor shall submit a list of qualified attorneys outside of Contractor's office to the City Administrator for approval prior to any attorney on said list attorney providing services under this Agreement. Approval by the City Administrator may be withheld in his sole discretion. If after three (3) business days no decision is made by the City Administrator on a requested approved list, said list shall be deemed accepted by the City. A qualified attorney shall mean an attorney licensed to practice law in the State of Washington who is able to certify that he or she complies with the applicable Standards for Indigent Defense Services as adopted by the Washington Supreme Court and as hereafter amended. All terms and conditions of this Agreement shall apply to any approved subcontract related to this Agreement. Contractor shall remain fully responsible for compliance with the terms and conditions of this Agreement on any case assigned to the Contractor, including cases in which services are subcontracted by the Contractor to another attorney as provided herein.

The City shall not assign any defense of indigent defendants to any Contractor or Attorney-at-Law other than the Contractor herein; except that, the City shall assign an indigent defendant with whom the Contractor has a conflict of interest, to an Attorney-at-Law of the City's choice.

### **Section IX – Non-Discrimination**

During the term of this Agreement, the Contractor agrees that no person shall, on the grounds of race, creed, color, national origin, sex, marital status, age, religion, or on the presence of any sensory, mental or physical disability, be excluded from full employment rights with the Contractor or from representation by the Contractor. The Contractor shall not discriminate against any employee or applicant for employment for the above reasons, provided the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents performance of the particular work involved.

### **Section X – Relationship of Parties**

The parties intend that this Agreement shall create an independent Contractor relationship between the Contractor and the City. The Contractor shall not be considered to be agent, employee, servant or representative of the City for any purpose whatsoever, and no employee of the Contractor will be entitled to any benefits of City employment. The Contractor 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.

In the performance of the services herein contemplated, the Contractor shall be deemed to be an independent Contractor with the authority to control and direct the performance of the details of the work, subject however, to direction by the Lynden Municipal Court and the City's right of inspection and review.

### **Section XI – Communication Between Parties**

Communication between the Contractor and the City shall be addressed to the regular place of business of each party.

In the case of the Contractor, all communications to the Contractor, and referral of cases, shall be sent to:

Jason Smith  
North County Public Defense  
1720 Iowa Street  
Bellingham, WA 98229

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

City of Lynden  
City Clerk  
300 4<sup>th</sup> Street  
Lynden, WA 98264

### **Section XII – Duration**

This Agreement shall have a duration of two years from its Effective Date, during which time compensation for services shall remain unchanged. The Parties may by mutual written agreement renew this Agreement for up to a maximum of two additional two-year terms, at which time compensation adjustments may be considered based on changes in caseloads and cost of living. Any such Agreement renewal shall be completed not later than ninety (90) days prior to expiration of the term.

### **Section XIII – Termination of Parties**

In the event that the City, in its sole discretion, determines that the work of the Contractor or another qualified attorney hired by the Contractor, is unsatisfactory, the City may terminate this Agreement. In such event, the City shall notify the Contractor by serving, at least thirty (30) days prior, written notice to the Contractor stating reasons why this Agreement is being terminated.

Either the City or the Contractor may terminate this Agreement without cause. To terminate this Agreement without cause, the party terminating shall notify the other party at least ninety (90) days in advance of the proposed date of termination and, during that ninety-day period, this Agreement shall remain in force unless terminated earlier by mutual agreement of the parties.

In the event the date of termination of this Agreement passes without the execution of a similar contract for a permanent public defender and if, in that event, the parties continue to perform according to the 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.

Following termination of this Agreement, the Contractor shall cooperate with the City to assist with transfer of all assigned pending cases to the attorney selected by the City to provide permanent indigent defense services. Pending cases shall mean cases assigned to the Contractor in accordance with this Agreement which have not been resolved.

### **Section XIV – Remedies for Breach and attorney's fees and costs**

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.

### **Section XV – Nonwaiver of Breach**

Failure of either party to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall a waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

### **Section XVI – Venue Stipulation**

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 Whatcom County Superior Court, Bellingham, Washington.

**Section XVII – Integration**

This writing supersedes all prior agreements between the parties (whether written or oral) and constitutes the full and only agreement between the parties, there being no promises, agreements or understandings, written or oral, except as herein set forth, or as hereinafter may be amended in writing. This Agreement may only be amended or modified by written agreement of the parties.

**Section XVIII – Severability**

If any portion of this Agreement is deemed void, illegal or unenforceable, the balance of this Agreement shall not be affected thereby.

**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 above.

\_\_\_\_\_  
Jason Smith, North County Public Defense  
Attorney-at-Law

\_\_\_\_\_  
Scott Korthuis  
Mayor, City of Lynden

STATE OF WASHINGTON    )  
  ) ss  
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 Mayor of the City of Lynden to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: \_\_\_\_\_, 2021.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON    )  
  ) ss  
COUNTY OF WHATCOM    )

I certify that I know or have satisfactory evidence that Jason Smith 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 for North County Public Defense to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: \_\_\_\_\_, 2021.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_