

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

This Agreement for Interim Indigent Criminal Defense Services (“Agreement”) by and between the City of Lynden, a municipal corporation, hereinafter referred to as the “City,” and Sharon D. Westergreen, Westergreen Law, hereinafter referred to as the “Contractor,” collectively referred to as “Parties,” is for the purpose of providing short-term, temporary attorney services as outlined herein, commencing ~~August~~ July 24, 2019.

Whereas, the Parties understand that the City is in the process of retaining an attorney or law firm to perform the services described in the Agreement on a long-term, non-temporary basis; and

Whereas, once the City retains an attorney or law firm as described above, the City will terminate this Agreement in accordance with its terms; and

Whereas, the above recitals are a material part of this Agreement; and

Now, therefore, the
~~The~~ Parties agree as follows:

Section I – Services

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

- 1) Attending regular and special sessions of the Lynden Municipal Court for all assigned defendants, pursuant to the current Lynden Municipal Court calendar (if additional court appearances are added to the Public Defender schedule that existed as of July 15, 2019, this Contract shall be re-negotiated to accommodate for the extra work);
- 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 for law enforcement use to respond to calls;
- 5) ~~Accepting calls from clients and potential clients charged with crimes within the jurisdiction of the City and responding appropriately;~~
- 6) ~~Meeting with clients and conducting investigations as appropriate;~~
- 4) ~~Representing indigent defendants in appeals to the Whatcom County Superior Court except when representing the same defendant during the trial; and~~
- 5) ~~Performing services consistent with the standard of practice within the Lynden community.~~

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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.

Section II – Consideration

In consideration for the services described above, the City agrees to pay the Contractor for such services as follows:

- 1) ~~An hourly rate of sixty dollars (\$60) per hour for Contractor’s attorney time and thirty dollars (\$30) per hour for Contractor’s paralegal time/legal assistant time spent. The sum of three hundred dollars (\$300) per on each assigned case except that probation revocation cases and probation review cases shall be paid at \$240 per case. For purposes of this paragraph, case shall mean criminal charge, on public defense services for the City of Lynden, whether the case is assigned yet or not (i.e. Contractor will not hang up on a defendant who calls, but once she realizes that the person has not had a public defender appointed, she will advise the client on the process and conclude the contact as soon as possible.)~~
↳

If a warrant is issued for a no show, on a defendant who is on the public defender’s case load, and that warrant is not served within 45 days of the issuance of the warrant, nor the defendant found or available to be contacted within said 45 days, the ~~public defender~~ Contractor may enter a Motion to Withdraw from the case. Should the defendant later return to Lynden Municipal Court and require a public defender, the Contractor may charge the City as he/she would for a new case.

- 2) The sum of one thousand dollars (\$1000) for all appeals taken to Superior Court.

~~In addition to the flat fee for the case, bench trials and court hearings requiring witness attendance shall be paid at a rate of fifty dollars (\$50) per hour.~~

- 3) ~~The sum of three hundred dollars (\$300) per half day spent in jury trial, in addition to the per case fee set forth in subparagraph 1.~~

- 4)3) Reimbursement for the costs of investigation services as appropriate; provided that such services must be supported by documentation satisfactory to the City of Lynden.

- 5)4) Reimbursement for costs of the following nature, supported by documentation satisfactory to the City of Lynden.
- a) The actual reasonable cost of an expert witness or interpreter ordered by the Lynden Municipal Court in connection with services performed under the terms of this Agreement.
 - b) The actual reasonable expense of service of subpoenas, if any required in connection with the services performed under the terms of this Agreement.
- 7) The Contractor's compensation shall be paid monthly ~~on account for cases assigned during that month~~, with payment due within 30 days of the invoice date. ~~Contractor's invoices shall list the time spent by case number except when it is administratively burdensome to do so, such as during court appearances on numerous cases. In such instances, Contractor may lump representation of numerous cases into one entry of time, without any reference to case numbers.~~ The City of Lynden Finance Department must receive invoices from Contractor by the 5th of each month (or the following Monday if the 5th falls on a weekend day) for processing during the current month. The Finance Department is required to seek City Council approval of invoices during the second Council meeting of the month (third Monday) before payment can be rendered.

Section III – Review & 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 contact.

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 without obtaining prior written approval from the City; except that, from time to time the Contractor may subcontract with another qualified attorney from the approved list of attorneys attached as Exhibit A to assist with the services provided under the terms of this Agreement. Any request for an addition to the approved list of qualified attorneys shall be submitted to the City Administrator for approval prior to said attorney providing services under this Agreement, which approval may be withheld in the City’s sole discretion. If after three (3) business days, no decision is made by the City Administrator on a requested addition to the approved list set forth in Exhibit A, the addition 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 Contractor, including cases in which services are subcontracted by Contractor to another attorney as provided herein.

The Contractor may have a qualified attorney fill-in for the Contractor should the Contractor require coverage on an occasional ad-hoc basis. Abuse of this provision shall be grounds for the City to terminate this Contract.

The City shall not assign any defense of indigent defendants to any Contractor or Attorney at Law other than to 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. Except as otherwise provided, assignment of indigent defendant cases

to an Attorney-at-Law other than the Contractor shall constitute a material breach of this agreement by the City, and the City shall be liable to the Contractor for the fee that the Contractor would have received from the City had the case been properly assigned to the Contractor.

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 referrals of cases, shall be sent to:

Sharon D. Westergreen
P.O. Box 174
Everson, WA 98247

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

City of Lynden,
Court Clerk
300 4th Street
Lynden, WA 98264

Section XII – 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 shall notify the Contractor by serving, at least fourteen (14) 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 fourteen (14) days in advance of the proposed date of termination and, during that fourteen-day period, this Agreement shall remain in force unless terminated earlier by mutual agreement of the Parties. Either Party may waive this fourteen-day notice and the Parties may mutually agree on the termination date.

Following termination of this Agreement, Contractor shall cooperate with the City to assist with transfer of all assigned pending cases to the attorney selected by the City to provide indigent defense services. Pending cases shall mean cases being temporarily handled by assigned to Contractor, in accordance with this Agreement which have not been resolved. ~~Should the City pay the selected attorney on a monthly basis, Contractor shall withdraw from pending cases and substitute the selected attorney for all said cases. Should the City pay the selected attorney on a per case basis, at Contractor’s discretion, Contractor may move to withdraw from pending cases and substitute the selected attorney.~~

Following termination of this Agreement, Contractor shall provide to the attorney selected by the City to provide permanent indigent defense services all pending case files and discovery in Contractor’s possession and be available to assist with the transition. If selected as the City’s permanent indigent defense attorney, Contractor intends to provide a credit to the City for work performed on pending cases.

Section XIII-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 XIV-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 XV – 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 the Whatcom County Superior Court, Bellingham, Washington.

Section XVI-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 XVII-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.

Contractor
Sharon D. Westergreen, Westergreen Law

Scott Korthuis
Mayor, City of Lynden

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 Sharon D. Westergreen signed this instrument and acknowledged that he signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledges it 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 _____.

EXHIBIT A

Bratlien, Mark, WSBA #33819
Lackie, Patrick, WSBA # 31484