

REQUEST FOR PROPOSALS – PUBLIC DEFENDER

RFP No. 2016-16

1. General Instructions.

1.1. Carefully read all instructions, requirements, and specifications of this Request for Proposal (“RFP”), and return page 7 signed by the proponent along with the proposal. All documentation and forms must be properly and fully completed, and must be submitted with all applicable exhibits, supplements, and samples. Incomplete proposals will not be considered. Proposals should be submitted via hand-delivery or mail prior to the submission deadline contemplated by Section 2.5. Proposals received subsequent to the submission deadline, or by some other deliver method will not be considered. Proponents are encouraged to contact the City prior to the submission deadline to verify that a particular proposal has been received.

2. Public Defender Summary.

2.1. The summarized information in this Section 2. is provided for convenience only. If any conflict exists between this summarized information and the information provided elsewhere herein, the information provided elsewhere herein shall control.

2.2. The title of this RFP shall be referred to as “Request for Proposals – Public Defender.”

2.3. The reference number for this RFP shall be “RFP No. 2016-16.”

2.4. The location of this RFP, as well as any responses hereto, shall be Lehi City, Utah.

2.5. The submission deadline for this RFP shall be no later than September 29, 2016 at 5:00 p.m. MST.

2.6. The contact information relating to this RFP shall be:

Lehi City Corporation
c/o Robert Ranc
153 North 100 East
Lehi, Utah 84043

2.7. Any proposal submitted pursuant to this RFP shall constitute an offer by the proponent to the City.

3. RFP Description.

3.1. Lehi City (the “City”) is seeking proposals for an attorney or law firm to act as a public defender for misdemeanor criminal cases prosecuted by the City.

3.1.1. The successful Proponent must be a good-standing member of the Utah State Bar.

3.1.2. The successful Proponent must have significant experience practicing law in the area of criminal defense.

3.1.3. The successful Proponent will be appointed by various judges to represent indigent and other qualifying defendants (as determined by said judges) being prosecuted by the City.

3.1.4. The successful Proponent is expected to be present in court whenever his or her appointed clients are scheduled to appear, and to competently handle any matters pending before the court, including (but not limited to) reviews, orders to show cause, waiver hearings, arraignments, bail hearings, pretrial conferences, trials (bench and jury), and preliminary hearings.

3.1.5. The successful Proponent is also expected to meet with appointed clients as needed, and to provide competent legal advice and representation.

3.1.6. Class B misdemeanors, class C misdemeanors, and infractions are heard at the Lehi City Justice Court, 154 North Center Street, Lehi, Utah 84043.

3.1.6.1. Defendants who are represented by the public defender in the Lehi City Justice Court have typically been placed on Monday afternoon calendars, with some occasional video hearings with the jail on Wednesday afternoons. Bench trials have typically been scheduled for Wednesday afternoons, and jury trials have typically been scheduled for Tuesdays. However, the City anticipates having a new judge on the bench within the next few months who may or may not continue this practice.

3.1.6.2. For informational purposes only, between August 1, 2015 and July 31, 2016, the Lehi City Justice Court appointed the public defender to represent 179 defendants. The City cannot and does not guarantee that the successful Proponent will be appointed to any specific number of cases each month or each year.

3.1.7. Class A misdemeanors are heard at the Fourth District Court in American Fork, 75 East 80 North, American Fork, Utah 84003.

3.1.7.1. Defendants who are represented by the public defender in the Fourth District Court in American Fork have typically not been placed on a single calendar. However, The Fourth District Court in American Fork has typically heard the City's criminal cases on Tuesday mornings, Wednesday mornings, and Friday mornings. Trials have typically been scheduled for Wednesday afternoons. However, the City anticipates that recent vacancies in the Fourth District Court may result in new judges, who may or may not continue this practice. Proponents are encouraged to contact the Fourth District Court in American Fork for more information about scheduling.

3.1.7.2. For informational purposes only, between January 1, 2015 and December 31, 2015, the Fourth District Court in American Fork appointed the public defender to represent

68 defendants. The City cannot and does not guarantee that the successful Proponent will be appointed to any specific number of cases each month or each year.

3.1.8. The successful Proponent must be prepared to begin accepting new appointed cases as of October 17, 2016.

3.2. The work to be completed as contemplated by this Section 3 shall hereinafter be referred to as the “Scope of Work.”

3.3. In the event that it becomes necessary to revise this RFP in whole or in part, an addendum will be provided to all Proponents and potential Proponents of which the City has record as having received this RFP. Any addendum provided pursuant to this Section 3.3. shall have the effect of modifying this RFP as outlined in said addendum.

4. RFP Pricing.

4.1. The cost submitted with any proposal shall, upon being awarded a contract subject to this RFP, commit the successful Proponent to said cost in performing the Scope of Work. The representations submitted pursuant to this RFP, shall be binding upon each respective proponent for: (a) sixty (60) days from the submission deadline contemplated by Section 2.5: or (b) until the successful proponent and the City enter into an agreement pursuant to this RFP, whichever occurs first.

4.1.1. Both hourly and flat-fee pricing options will be considered by the City.

4.1.2. The City will consider proposals for performing the Scope of Work only in the Fourth District Court in American Fork, only in the Lehi City Justice Court, or both. However, preference will be given for those proposals contemplating performing the Scope of Work in both courts.

4.1.3. A Proponent may withdraw or modify its proposal prior to the submission deadline. Any such withdrawal or modification must be in writing, and must be signed by the same authorized individual who originally signed page 7.

4.2. If deemed to be in the best interests of the City, the City reserves the right to:

4.2.1. Reject any and all proposals.

4.2.2. Waive any formality in the proposals received.

4.2.3. Accept or reject any or all of the items in the proposal.

4.2.4. Award a contract subject to this RFP in whole or in part.

4.2.5. Negotiate any and all elements of the proposals received.

4.3. The City shall not be liable for any cost incurred by a Proponent in preparing, presenting, or delivering a proposal pursuant to this RFP.

5. Other Instructions.

5.1. Each Proponent must submit a complete and concise proposal in response to this RFP, and must demonstrate the Proponent's ability to meet the requirements of this RFP. Each proposal must be accompanied by a transmittal letter, signed by an authorized representative, binding the Proponent to the terms proposed. At the discretion of the City, the contents of any proposal submitted by the successful proponent may become part of any contract awarded pursuant to this RFP.

5.1.1. The proposal must identify the individuals who will perform any of the Scope of Work. If more than one person will be performing the Scope of Work, the proposal must also identify who will appear most frequently in court.

5.1.2. The proposal should identify at least three professional references, along with corresponding contact information, who can attest to the Proponent's ability to competently represent clients in criminal cases.

5.1.3. Each Proponent is solely responsible for any information submitted or omitted from its proposal.

5.1.4. All materials contained in, or submitted with, a proposal shall become the property of the City, and may be returned only at the City's option.

6. Representations and Warranties.

6.1. By submitting a proposal, each Proponent represents and warrants that:

6.1.1. Its proposal is made in good faith.

6.1.2. Its proposal is not submitted in the interest of, or on behalf of, another person or entity.

6.1.3. It has not directly or indirectly induced or solicited any other Proponent to submit a bid other than in good faith.

6.1.4. It has not directly or indirectly induced or solicited any other person or entity to abstain from submitting a proposal.

6.1.5. It has not sought by collusion to obtain for itself any advantage over other proponents or the City.

6.1.6. It shall not violate, or cause any other person or entity to violate, any Federal, State, or municipal law, including (but not limited to) the Utah Municipal Officers and Employees Ethics Act.

7. Evaluation Process.

7.1. All proposals submitted in response to this RFP will be evaluated in a manner consistent with the Lehi City Municipal Code, and as otherwise set forth in this RFP.

7.2. As an initial step in the evaluation process, the City shall review all proposals received by the submission deadline contemplated by Section 2.5. Next, any timely, yet non-responsive proposals (i.e., those proposals not conforming to the requirements set forth in this RFP or the Lehi City Municipal Code) will be eliminated. All remaining timely and responsive proposals shall then be cursorily reviewed by the City to eliminate from further considerations those bids which, in the sole discretion and judgment of the City, fail to offer sufficient or substantive provisions which are required to warrant further consideration. The City reserves the right to disqualify any proposal that significantly deviates from the terms, conditions, and specifications contemplated by this RFP. Any remaining bids will then be reviewed and evaluated in detail. If the City discovers at any point in the evaluation process that a proposal is lacking required or requested information, the City may remove said proposal from further consideration.

8. Evaluation Criteria.

8.1. In determining which Proponent is the lowest responsible Proponent, the City shall evaluate the proposals received in accordance with the following criteria:

8.1.1. The Proponent's relevant qualifications.

8.1.2. The Proponent's professional reputation (with the City and other entities or individuals), including character, integrity, reputation, judgment, experience, and efficiency.

8.1.3. The quality of the services proposed, as well as the quality of previous services provided by the Proponent.

8.1.4. The Proponent's ability, capacity, and skill to provide the Scope of Work.

8.1.5. The sufficiency of a proponent's financial resources, and the effect thereof on the Proponent's ability to perform the Scope of Work.

8.1.6. Any litigation, prosecution, discipline, or other claims by or against a Proponent.

8.1.7. Availability to perform the Scope of Work.

8.1.8. The proposed RFP pricing.

10. Disclosure of Proposal Contents.

10.1. By submitting a proposal pursuant to this RFP, each Proponent acknowledges that its proposal may be subject to public disclosure pursuant to the Government Records Access and Management Act, UTAH CODE ANN. § 63G-2-101, *et seq.* (“GRAMA”), as the same may be amended from time to time. If a Proponent desires to have specific information contained in its proposal protected from public disclosure, the Proponent may provide a written claim and description of business confidentiality with respect to any such information. Filing a written claim and description of business confidentiality does not guarantee that any information will remain protected or private as the City will strictly comply with GRAMA. As a general rule, RFP pricing shall not be considered protected or private information.

I hereby acknowledge that I have received, read, and understand the foregoing RFP (RFP No. 2016-16). The proposal that has been submitted herewith complies with the requirements of said RFP and applicable provisions of the Lehi City Municipal Code.

Signature of Proponent:

By: _____

Its: _____

Address: _____

Telephone: _____

Date: _____

Attachment No. 1

PUBLIC DEFENDER AGREEMENT

1. Introduction.

1.1. This *Public Defender Agreement* is entered into by and between Lehi City and _____. This Agreement shall be binding and effective as of the Effective Date.

2. Recitals.

2.1. WHEREAS, the City is desirous of ensuring that all criminal defendants, regardless of financial ability to pay, have competent legal representation during the criminal justice process; and

2.2. WHEREAS, _____ is capable and desirous of providing such representations to criminal defendants at the discretion of a court of competent jurisdiction.

2.3. THEREFORE, in consideration of the promises, covenants, and conditions set forth in this Agreement, and in further consideration of the execution of this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and _____ agree as follows.

3. Definitions.

3.1. The following capitalized words or terms shall have the corresponding meanings or definitions as follows:

3.1.1. Agreement. This *Public Defender Agreement*.

3.1.2. Calendar Days. Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, and Sunday.

3.1.3. City. Lehi City.

3.1.4. Consideration Payment. The goods, services, payments, etc. constituting the consideration contemplated by Section 5.

3.1.5. Effective Date. The date when both parties have affixed their respective signatures to this Agreement. If the second party has not affixed its signature to this Agreement within sixty (60) days of when the first party affixed its signature, this Agreement shall be void.

3.1.6. _____.

3.1.7. Scope of Service. The performance contemplated by Section 4., for which the Consideration Payment shall be provided.

3.1.8. Scope of Work. *See*, Scope of Service.

3.1.9. Working Days. Monday, Tuesday, Wednesday, Thursday, and Friday.

4. Scope of Service.

4.1. Unless a genuine conflict of interest exists, or unless otherwise prohibited or discouraged by law or applicable professional standards, _____ shall accept all new appointments from the Fourth District Court in Utah County and the Lehi City Justice Court to provide competent legal representation to indigent and other qualifying criminal defendants (as determined by the judges in the aforementioned Courts) in conjunction with said defendants' pending criminal cases being prosecuted by the City.

4.1.1. The Scope of Service contemplated by this Agreement includes providing competent legal representation whenever _____'s appointed clients are scheduled to appear before either of the foregoing Courts in cases being prosecuted by the City, including (but not limited to) reviews, orders to show cause, waiver hearings, arraignments, bail hearings, pretrial conferences, trials (bench and jury), and preliminary hearings. This Scope of Service also includes (but is not limited to) meeting with appointed clients as needed in order to provide such competent legal representation.

4.2. Ultimately the choice to appoint _____ to represent indigent and other qualifying criminal defendants rests with the aforementioned Courts. However, the City will notify said Courts of this existence of this Agreement, and that it is the City's intention to have _____ act as the public defender for any cases prosecuted by the City, except for those instances where representation would present a genuine conflict of interest, or unless otherwise prohibited or discouraged by law or applicable professional standards.

4.3. It is anticipated that _____ will begin accepting new appointments from the aforementioned Courts on October 17, 2016.

5. Consideration.

5.1. In exchange for the Scope of Service, the City shall pay _____ as follows:

5.1.1. _____.

5.1.2. _____.

5.2. The City may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any of the Consideration Payment to the extent that the City reasonably determines such withholding is necessary to protect itself from loss or liability on the account of:

5.2.1. Defective performance by _____, including (but not limited to) incompetent services not remedied.

5.2.2. Any other failure to comply with the terms and conditions of this Agreement.

5.3. Upon _____'s timely remedy of the grounds for withholding some or all of the Consideration Payment as contemplated by Section 5.2., the corresponding amount withheld shall be paid to _____. However, in the event of _____'s default, the City reserves the right to perform the Scope of Service, or any unfinished portion thereof, itself, or to procure the same from a third party, while holding _____ responsible for any costs occasioned thereby. If the City performs any portion of the Scope of Service itself, or obtains any portion of the Scope of Service from a third party, _____ shall not be entitled to any Consideration Payment withheld, and _____ shall pay the City any amounts owed as contemplated by this Section 5.3., within thirty (30) days of receiving a notice of indebtedness from the City.

5.4. In the event the City terminates, suspends, or abandons this Agreement without cause pursuant to Section 6.3., the City shall pay _____ a proportionate amount of the Consideration Payment for any of the Scope of Service which was actually performed or provided prior to termination, suspension, or abandonment.

6. Termination and Non-Appropriation.

6.1. The City may terminate this Agreement at any time if, in the sole discretion of the City:

6.1.1. _____'s performance under this Agreement is unsatisfactory.

6.1.2. _____ fails to perform its duties and obligations required by this Agreement with diligence or within the time specified herein.

6.1.3. _____ has otherwise materially breached this Agreement.

6.2. Prior to terminating this Agreement as contemplated by Section 6.1., the City must first provide written notice to _____ of the City's intention to terminate this Agreement. Said notice of termination must be provided by the City to _____ at least seven (7) Calendar Days prior to termination. After receiving such notice of termination from the City, _____ shall have the next five (5) Working Days in which to cure any deficiency noted by the City. If _____ adequately cures any such deficiency, to the sole satisfaction of the City, this Agreement shall continue. However, in the event _____ fails to adequately cure any such deficiency, this Agreement shall terminate, and _____ shall be liable for any resulting damages associated with said deficiency and breach of this Agreement. The City may pursue any such damages through all available means, whether in law or in equity, or both.

6.3. Either party may, in its sole discretion, terminate, suspend, or abandon this Agreement without cause at any time by providing written notice to _____ of the City's intention to terminate this Agreement without cause. Said notice of termination must be provided to the non-terminating party at least sixty (60) calendar days prior to termination.

6.4. Any Scope of Service which _____ has completed or performed prior to the date of any termination, suspension, or abandonment, shall be recorded, and tangible work documents and files shall be transferred to a successor public defender, as chosen by the City. _____ will cooperate in good faith with any such successor to transfer said documents and files. If the City has terminated this Agreement without cause as contemplated by Section 6.3., then subsequently requests _____ to recommence its performance of the Scope of Service after more than three (3) months from the date of termination, the Consideration Payment amount shall be subject to renegotiation at the request of either party hereto.

7. Taxes.

7.1. Each party shall be solely responsible for any tax liability which it may incur as a result of this Agreement.

7.2. The City is exempt from the payment of any Federal excise or any Utah sales tax. Such taxes will not apply to the City, unless otherwise noted in writing by the City. Any price listed by _____ on a purchase order, bill of service, or equivalent, must be net, exclusive of taxes. However, when under established trade practices, any Federal excise tax is included in the list price, _____ may quote the list price, and shall show separately the amount of Federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted from any payments made by the City.

8. Indemnification and Insurance.

8.1. _____ shall be solely responsible for any damage or injury which it, or its employees, agents, subcontractors, independent contractors, and the like, may cause in the performance of this Agreement. Consequently, to the fullest extent permitted by law, _____ shall indemnify, defend, and hold harmless the City, any subsidiary or affiliate of the City, and its past, present and future agents, representatives, and employees from and against all claims, damages, lawsuits, losses, liabilities, liens, cost, citations, penalties, fines and expenses, including (but not limited to) attorneys' fees, arising out of or resulting from _____'s performance of this Agreement, provided that such claims, damages, losses, liabilities, liens, costs, citations, penalties, fines, and expenses are caused in whole or in part by any negligent, grossly negligent, reckless, or intentional act or omission attributable in any way to _____, or its employees, agents, subcontractors, independent contractors, and the like, or anyone directly or indirectly employed by _____ or any subcontractor, or any party for whose acts _____ may be liable, regardless of whether liability is imposed upon such party. Such obligation shall not be construed to negate, abridge, or otherwise

reduce any other right or obligation of indemnity, which may otherwise exist in favor of the City. In any and all claims against the City, or any subsidiary or affiliate, or any of its past, present or future agents, representatives, or employees, by _____, or its current or former employees, agents, subcontractors, independent contractors, and the like, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by the amount or types of damages, compensations, or benefits payable by or for _____, or any subcontractor, worker's or workman's compensation acts, disability benefit acts, or other employee benefit acts.

8.2. The City shall indemnify and hold harmless _____, its parent, subsidiaries, affiliates, agents, shareholders, directors, and employees from and against all damages, costs, liabilities (including reasonable attorneys' fees and expenses) arising from or related to the actions of the City with respect to the subject matter of this Agreement.

8.3. _____, at its own expense, shall provide for the payment of worker's compensation benefits to its employees employed on or in connection with the performance of this Agreement, and in accordance with applicable State and Federal laws.

8.4. During the performance of this Agreement, _____, at its own expense, shall maintain malpractice insurance specifically covering the Scope of Service.

8.5. Before commencing the Scope of Service, and at any time thereafter upon written request by the City, _____ shall furnish the City with a copy of certificates of insurance as evidence that policies providing the coverage required by this Agreement are in effect.

9. Representations and Warranties.

9.1. Each party represents that:

9.1.1. Its signatory has the authority to the party to this Agreement.

9.1.2. It has not sold, assigned, or otherwise transferred any interest in the claims or subject matter contemplated by this Agreement.

9.2. _____ represents and warrants that:

9.2.1. _____ has sufficiently and reasonably researched the requirements of this Agreement, understands the same, and is able to competently perform each of its duties and obligations required hereunder.

9.2.2. _____ shall perform its obligations required by this Agreement in a manner consistent with applicable professional and technical standards for the Scope of Service of a similar and comparable nature, and shall ensure that the implementation thereof is also performed in an applicable professional, technical, and workmanlike manner.

9.3. _____ Utah bar license, as well as _____
_____’s licensure or authority to transact business issued by the Utah Division of Corporations
and Commercial Code, as well as any other required licensure, are currently active, and shall
remain active throughout the performance of this Agreement.

10. Confidentiality.

10.1. The parties acknowledge that this Agreement may be subject to public disclosure pursuant to the Government Records Access and Management Act, UTAH CODE ANN. § 63G-2-101, *et seq.*, as the same may be amended from time to time.

11. Equal Opportunity.

11.1. Neither _____, nor any sub-contractor of _____, shall discriminate against any employee, applicant for employment, or recipient of services on the basis of race, religion, color, sex, age, disability, or national origin.

12. Record Keeping and Audits.

12.1. _____ shall maintain accurate accounting records for all goods and services provided in the performance of this Agreement, and shall retain all such records for a period of at least three (3) years following the termination or completion of this Agreement. Upon forty-eight (48) hours written notice and during normal business hours, the City shall have access to and the right to audit any records or other documents pertaining to this Agreement. _____ shall furnish copies of any records requested by the City at _____ expense

13. Relationship of the Parties, and Immunity.

13.1. The relationship between the parties shall be that of independent contracting parties. Each party shall be responsible for the manner of its own performance of this Agreement. Nothing herein shall be construed to create an employer-employee, principal-agent, or other similar relationship. Neither party is authorized to, nor shall either party, enter into any contract or commitment on behalf of the other party. Neither party shall be considered an affiliate or subsidiary of the other party. It is expressly understood that this Agreement, including the performance thereof, is not a joint venture, partnership, or any other relationship other than that of independent contracting parties.

13.2. Nothing in this Agreement, nor the performance hereof, shall adversely affect any immunity from suit, or any right, privilege, claim or defense, which the City or its employees, officers, and directors may assert under State or Federal law, including (but not limited to) The Governmental Immunity Act of Utah, UTAH CODE ANN. § 63G-7-101, *et seq.* All claims against the City or its employees, officers, and directors are subject to the provisions of the aforementioned act, which controls all procedures and limitations in connection with any claim of liability against the City.

14. Notice.

14.1. If any notice is required to be provided pursuant to the terms and conditions of this Agreement, said notice must be provided as follows:

To the City:

Lehi City Corporation
Attn: Robert Ranc
153 North 100 East
Lehi, Utah 84043
rrance@lehi-ut.gov

To Name2:

Attn: _____

14.2. If notice is sent via regular mail, commercial courier, and the like, receipt thereof shall be presumed on the third Calendar Day thereafter.

14.3. The designation of any address or individual contemplated by this Section 14 may be changed by notice given in the same manner as provided in this Section 14., and shall not be subject to the restrictions contemplated by Section 21.

15. Attorneys' Fees and Costs.

15.1. Each party shall bear its own attorneys' fees and costs incurred in connection with the drafting, execution, and performance of this Agreement. However, if any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees, legal costs, and other collection fees and costs incurred by said prevailing party in connection with the suit, both before and after judgment, in addition to any other relief to which such party may be entitled.

16. Non-Waiver.

16.1. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy or power provided herein or by law or in equity.

17. Binding Effect.

17.1. This Agreement is binding upon the parties and their proper and allowable heirs, legatees, representatives, successors, transferees, assignees, and delegates.

18. Assignment.

18.1. Neither party hereto may assign this Agreement, nor delegate any responsibilities under this Agreement. Any purported assignment or delegation in violation of this Section 18., without prior written consent from the non-assigning party, shall be void, and will be considered

a material breach of this Agreement. Consent may be withheld for any reason (reasonable or unreasonable).

19. Time.

19.1. Time is of the essence with this Agreement, as well as every term, covenant, and condition contained herein.

20. Force Majeure.

20.1. Neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, governmental acts or omissions, laws or regulations, labor strikes or difficulties, transportation stoppages or slowdowns or the inability to procure parts or materials. If any of these causes continue to prevent or delay performance for more than 180 days, the non-delaying party may terminate this Agreement, effective immediately upon notice to the delaying party.

21. Amendments.

21.1. This Agreement may not be modified, amended, or terminated, except by an instrument in writing, signed by each party hereto.

22. Further Assurances.

22.1. The City and _____ mutually agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement.

23. Incorporation of Miscellaneous Material.

23.1. Each section of this Agreement shall be considered a part hereof, including (but not limited to) Sections 1. and 2., respectively. Likewise, any exhibit referenced in this Agreement is made a part hereof.

24. Drafting and Voluntary Execution.

24.1. The negotiation and drafting of this Agreement have been accomplished collectively by each party hereto, and for all purposes this Agreement shall be deemed to have been drafted jointly by each such party. The parties acknowledge that they have been represented by counsel of their choice in all matters connected with the negotiation and preparation of this Agreement, or that they have had the opportunity to be represented by counsel, and that they have reviewed this Agreement with their counsel, or that they have had the opportunity to review this Agreement with their counsel, and that they fully understand the terms of this Agreement and the consequences thereof. Furthermore, the parties hereto have been afforded the opportunity to negotiate as to any and all terms of this Agreement, and each party is executing this Agreement voluntarily and free of any undue influence, duress, or coercion. The parties further acknowledge

that they have relied on their own judgment, belief, knowledge, and advice from their own representatives, consultants, affiliates, and agents, as to the extent and effect of the terms and conditions contained herein. The parties are not relying upon any statement or representation made by any other party or any officer, director, employee, agent, servant, adjustor, or attorney acting on behalf of another party, unless such a statement or representation is expressly set forth in this Agreement.

24.2. The headings in this Agreement are for convenience only and shall not be interpreted to limit the meaning of the language contained herein in any way.

25. Severability.

25.1. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall, nevertheless, be construed, performed, and enforced as if the invalidated or unenforceable provision had not been included in the text of the Agreement.

26. Governing Law.

26.1. This Agreement shall be construed in accordance with the laws of the State of Utah, regardless of any choice or conflict of law rules.

26.2. Each party agrees that any legal action or proceeding with respect to this Agreement may only be brought in the courts of Utah County, in the State of Utah. Consequently, each party hereby submits itself unconditionally to the jurisdiction and venue of the aforementioned courts. Each party hereby waives, and agrees not to assert by way of motion, as a defense, counterclaim, or otherwise, in any action associated with this Agreement that:

26.2.1. Any party hereto it is not personally subject to the jurisdiction of the aforementioned courts for any reason other than the failure to properly serve process.

26.2.2. Any party or its property is exempt or immune from jurisdiction of the aforementioned courts, or from any legal action commenced in said courts (whether before or after judgment).

26.2.3. To the fullest extent allowed by law, that:

26.2.3.1. The action in any such court set forth above is brought in an inconvenient forum.

26.2.3.2. The venue of any such action is improper.

26.2.3.3. This Agreement, or the subject matter hereof, may not be heard by said courts.

26.3. Notwithstanding the foregoing, other Federal, State, and municipal laws, regulations, rules, orders, and ordinances may be applicable to this Agreement. _____

_____ shall comply with any such applicable law, including (but not limited to) obtaining any permits or licenses required to perform the Scope of Service.

27. Third-Party Beneficiaries.

27.1. This Agreement is not meant to create any rights or benefits (whether intended or incidental) for any third party. Only the named parties to this Agreement may enforce the terms and conditions hereof.

28. Entire Agreement.

28.1. All agreements, covenants, representations and warranties – express or implied, oral or written – of the parties concerning the subject matter hereof are contained solely in this Agreement, subject to any implied warranties and conditions imposed upon the parties by Utah law. No other agreements, covenants, representations, or warranties – express or implied, oral or written – have been made by any party to any other party concerning the subject matter hereof. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants, and warranties concerning the subject matter hereof are merged herein. This is an integrated agreement

29. Duplicate Originals.

29.1. This Agreement may be executed in identical duplicate originals, each of which shall be deemed to be an original, and all of which shall be deemed to constitute one and the same instrument.

30. Signatures.

30.1. The City and _____ voluntarily enter into this Agreement, as evidenced by affixing their respective signatures, below.

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[SIGNATURE PAGE TO FOLLOW]

[SIGNATURE PAGE TO PUBLIC DEFENDER AGREEMENT]

City: _____:

Lehi City
By: Bert Wilson
Its: Mayor

Dated: _____

Attest:

Marilyn Banasky, City Recorder

Dated: _____

By:
Its:

Dated: _____