

SMITH RODGERS, PLLC
A Professional Limited Liability Company

Contract to Retain Smith Rodgers PLLC for 24-Hour Law Enforcement Legal Support

Agreement made by and between the **Huntersville Police Department** (hereinafter the "Client") and Smith Rodgers PLLC; (hereinafter the "Attorneys" or "SR").

SECTION ONE
PURPOSE AND NATURE OF EMPLOYMENT

In recognition of the legally-intensive and high-consequence nature of police supervisory decision-making, the Client employs the Attorneys to provide state-of-the-art "24/7" legal consultation services in support of the performance demands placed upon modern professional law enforcement organizations operating in an increasingly complex justice system. Under this contract, consultation provided to the Client by the Attorneys will generally pertain to "real-time" or "tactical" legal needs arising under either of two circumstances:

- (1) Criminal investigations for which real-time police decision-making requires or may be enhanced by the judgment and intervention of skilled police counsel, and with the objective of maximizing the ultimate admissibility of criminal evidence or probability of a successful court prosecution;
- (2) Legal uncertainty arising as the result of any other law enforcement tactical situation, law enforcement response incident, or law enforcement circumstance for which imminent police action or supervisory-level decision-making may expose the Client, its agents and employees, to civil liability risk.

By the terms of this contract, the Attorneys shall be available for real-time law enforcement legal consultation 24-hours a day, 365 days a year, without absence or leave for holiday, sick time, "day off," or other interruption of service (barring extraordinary and unforeseen circumstances). The Attorneys shall be prepared for continuous availability for the immediate and real-time consultation needs of the Client, to include maintaining law enforcement legal subject matter expertise as well as continuous telephone access, maintaining access to essential legal resource materials at all times (including while "away from the office"), and by taking such other and further steps as may be expeditious in meeting the "continuously on call" demands of the Client's reasonable expectations under this contract.

As necessary to keep 24/7 tactical legal fees affordably priced for all agencies, the parties agree as follows: This legal services contract is for the Client's "real-time" or "tactical" legal questions only. Examples of real-time tactical questions are as set forth on the firm's website (see homepage, "**Sample Client Calls**" www.policehelp.net). Tactical legal questions do *not* include such matters as on-site legal training, policy revision projects, review or drafting of legal instruments, time-intensive research projects, negotiation of conflicts or strategies with outside counsel, filing motions or briefs, litigation or court appearances, management of subpoena objections, travel, or conferencing. Additional legal services can be billed or paid by separate agreement or "proposed invoice" upon agreement with client.

Client requests for tactical real-time legal services will be handled by the Attorneys without limitation, regardless of the number of such requests received, their complexity, or the day of week or time of day such requests are initiated. These requests for service will be handled in real-time by the Attorneys around-the-clock. In all cases, Client's telephone calls to the SR 24-hour response line, regardless of nature, will be handled immediately by a qualified SR Attorney. [The term "Attorney" as used in this Agreement may in some instances include a specially-trained paralegal working under the supervision of an attorney.]

Legal consultation shall generally be by telephone. In the event of a legal consultation need for which the Client desires assistance, the Client shall contact the SR 24-hour switchboard and thereupon inform the receptionist of the general nature of the legal issue. The SR receptionist shall immediately "call out" (page) the designated attorney(s)

who will immediately contact the Client at the phone number provided.

The Attorneys undertake to provide legal consultation and advice consistent with prevailing legal standards, not necessarily the Client's internal policy and procedure. The Client will conform the legal advice provided to more restrictive internal policy and procedure should such be necessary or appropriate in the judgment of the Client.

The parties agree that law enforcement legal inquiries not requiring real-time analysis, including matters that can be more leisurely or effectively referred to the offices of district attorneys, attorneys general, or city/county attorneys (etc.), should ordinarily be directed to those offices for resolution in accordance with their standard operating hours and practices. The parties agree and understand that such "coordination of services" is for the universal benefit of all SR law enforcement Clients statewide, and serves to keep SR "emergency lines open" while ensuring that 24-hour police consultation services remain practical, affordable, and cost-effective.

In recognition of the importance of the law enforcement command structure, the Attorneys and Client agree that it may be advisable for officers to first attempt to resolve legal uncertainties with an immediate supervisor prior to seeking to initiate services under the contract. Further, Chiefs and Sheriffs in their judgment may elect to designate a specific command level threshold (such as Lieutenant or Captain) through which authorization must be granted in order to initiate services under the contract. The parties agree and understand that the consultation services provided under the contract are principally for the Chief/Sheriff and command staff. Officers working in special assignments or functions (such as CID, civil process deputies and execution specialists, narcotics investigators, youth division detectives, etc.) may be granted permission to initiate services without the intervention or approval of a supervisor. The parties agree that this Agreement is not an employment contract, and that the Attorneys are not and will not be employees of the Client.

SECTION TWO LIMITATION OF REPRESENTATION

The parties understand and agree that the Attorneys' services on behalf of the Client shall be limited to those activities delineated in Section One. It is expressly agreed that the Attorneys will not serve as trial counsel, or otherwise undertake to replace the services ordinarily available through the offices of city/county attorneys, district attorneys, or other government counsel offices operating on standard schedules.

And whereas the legal services to be provided under this contract may tend to be "emergency" in nature; and whereas the Client will ordinarily be seeking expedited if not instantaneous legal opinions to guide its prospective and imminent law enforcement actions, it is further acknowledged and expressly agreed by all parties that the attorneys will undertake to provide expedited legal opinions in such instances, and that the attorneys may and will formulate and communicate such legal opinions "on the spot" without the benefit of the incident-specific legal research opportunities and time-intensive deliberations and reflections customary in conventional private practice settings.

SECTION THREE CONFLICT OF INTEREST

The Client and the Attorneys acknowledge that in the course of a given legal inquiry, the legal interests of the Client Agency and the legal interests of individual officer(s) may potentially conflict. In such circumstance the Attorneys will provide legal consultation that in their judgment will serve the best interests of the police agency Client. The Attorneys do not undertake to represent the legal interests of individual officers where the interests of officer(s) may be in conflict with those of the Client.

SECTION FOUR ATTORNEYS' FEES

The Client agrees to pay the Attorneys, upon execution of this Contract, a fee of **Eighteen Thousand and Seventy Dollars (\$18,070.00)** to assure that the Attorneys shall be available for the term set forth in Section Five below to

provide the legal services and expertise set forth in Section One above. This fee constitutes the full sum payable by the Client for the term of services. This fee is not refundable, as it represents a fee for the Attorneys' continuous availability and expertise over the life of the Contract, and is not in the nature of a fee for specific services rendered. *[NOTE: The fee would be refundable if for any reason required by the Rules of Professional Conduct of the North Carolina State Bar.]*

SECTION FIVE EFFECTIVE DATE/TERM

This Agreement shall be in effect on July 1, 2016 through June 30, 2017. At the end of the term, this contract can automatically renew without the necessity for a new contract document, at the option of the parties. In the event of automatic renewal, the annual fee amount set forth at section four may nevertheless be subject to appropriate adjustment from one year to the next, only upon agreement of the parties.

SECTION SIX AVAILABILITY OF TELEPHONE SERVICE

The Attorneys will make reasonable efforts to ensure that they are available by telephone and pager as set forth in Section One above. Availability will include the occasional use of cellular phones as well as conventional landline phones. Cellular coverage may vary depending on location, terrain, atmospheric conditions, and equipment. The Attorneys undertake to avail themselves of the best cellular coverage and equipment possible, but cannot be responsible for coverage problems beyond their control. The Client approves the use of pagers and cellular phones under the terms of this Agreement, accepting these limitations and acknowledging that cellular communications may be intercepted by individuals with certain equipment. Client cell phones, if desired, are provided by Client at Client's expense.

SECTION SEVEN TERMINATION

Either party to this contract may, at any time, terminate the services described in Section One, upon notice to the other party. In such event, the parties agree that the Attorneys shall return to the Client a pro-rata share of the retainer fee described in Section Four above, based on the portion of the term of this contract then remaining. The pro-rata refund will be calculated based on the number of days remaining in the contract.

SECTION EIGHT NOTICE

Any notices required under this contract shall be in writing and shall be deemed to have been duly served if delivered in person to the party for whom it is intended, or if delivered at or sent by registered or certified mail to the business address of the person for whom it is intended, as specified in this Agreement. The addresses are specified as the following:

SMITH RODGERS PLLC
Post Office Box 4803
Greensboro, NC 27404-4803

Chief Cleveland Spruill
9630 Julian Clark Avenue
Huntersville, NC 28078

SECTION NINE ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

SECTION TEN
MODIFICATION OF AGREEMENT

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if in writing signed by each party or an authorized representative of each party.

IN WITNESS WHEREOF, EACH PARTY TO THIS AGREEMENT HAS CAUSED IT TO BE EXECUTED AT GREENSBORO/ HUNTERSVILLE, NORTH CAROLINA, ON THE DATES INDICATED BELOW.

SMITH RODGERS PLLC

BY: /s/ M. Kevin Smith May 17, 2016
(date)

HUNTERSVILLE POLICE DEPARTMENT
(or Town of Huntersville)

BY: _____
(date)