

AGREEMENT FOR INDIGENT DEFENSE PROFESSIONAL SERVICES

Karen Lindholdt, Public Defender

THIS AGREEMENT is made by and between the City of Cheney, a municipal corporation of the State of Washington (the “City”), and Karen S. Lindholdt (the “Public Defender”). The City and Public Defender are each sometimes referred to herein as a “Party” and together as the “Parties.”

IN CONSIDERATION of the terms and conditions contained herein, the Parties covenant and agree as follows:

1. **Work to Be Performed.** The Public Defender shall provide all labor, services, and material, to satisfactorily perform the duties of the City of Cheney Municipal Court Public Defender, generally described below (the “Scope of Work”).

Pursuant to RCW 39.34.180, the City is responsible for the costs incident to prosecution of misdemeanor and gross misdemeanor offenses which are violations of state statutes that occur within its jurisdiction and that are committed by adults and/or juveniles for traffic offenses pursuant to RCW 13.04.030(1)(e)(iii), as well as misdemeanor or gross misdemeanor offenses which are a violation of City ordinances and committed by adults and/or juveniles for traffic offenses pursuant to RCW 13.40.030(1)(e)(iii).

For the purpose of this Agreement, the Public Defender’s Scope of Work shall include representation of indigent persons as required by the Constitution or defined by RCW Chapter 10.101 and RCW 36.26.070 in conjunction with violations of City Ordinances (which may adopt by reference state statutes) that are punishable as misdemeanor and gross misdemeanor offenses that occur within the City’s jurisdiction and that are committed by adults and/or juveniles for traffic offenses pursuant to RCW 13.04.030(1)(e)(iii), as well as any appeals to Superior Court. Additionally, representation of indigent persons as required by the Constitution or state statutes includes the prosecution of violations of the City’s Traffic Code, as well as any appeals to Superior Court. Appeals based on a defendant’s claim of insufficient assistance of council will be appointed a conflict public defender.

During the term of this Agreement, the Public Defender shall be licensed to practice law in the State of Washington and comply with the Rules of Professional Conduct and the requirements of Washington State Supreme Court Order No. 25700-A-1008, as amended (the “Supreme Court Orders”).

In addition, the Public Defender shall comply with the City of Cheney standards of public defense as identified in CMC 2.33.050 and standards for the provision of public defense services as generally identified in RCW 10.101.030 and endorsed by the Washington State Bar Association.

The City further agrees to provide the Public Defender with a conference room that will provide for confidential meetings with clients on scheduled court dates or through arrangement with the court clerk’s office.

A. **Administration.** The Mayor or designee shall administer this Agreement and be the primary contact for the Public Defender.

B. **Representations.** The City has relied upon the qualifications of the Public Defender in entering into this Agreement. By execution of this Agreement, the Public Defender represents it possesses the ability, skill, and resources necessary to perform the work and is familiar with

all current laws, rules, and regulations which reasonably relate to the position.

C. Technical Accuracy. The Public Defender shall be responsible for the technical accuracy of its services and documents resulting therefrom, and the City shall not be responsible for discovering deficiencies therein. The Public Defender shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in City-furnished information.

D. Office Hours. The Public Defender shall establish office hours for a minimum of four hours per week to be available for indigent client appointments and communications at an established office or at the Cheney Municipal Court by schedule or as arranged with the clerk's office. This requirement will be reviewed annually with any adjustments to be mutually agreed upon in writing with the Mayor.

E. Implementation of Standards for Indigent Defense. It is the intent of the Parties that the total case load, adjusted for case weighing, will comply with the standards adopted by the Supreme Court and allow the Public Defender to certify compliance to the City of Cheney Municipal Court.

F. Reimbursement of Non-Routine Expenses. The City agrees to reimburse to the Public Defender those Non-Routine Expenses incurred in connection with the Scope of Work, provided however, that the Non-Routine Expenses are first approved by the City of Cheney Municipal Court and the Public Defender agrees to comply with the Washington State Supreme Court Orders. As used herein, "**Non-Routine Expenses**" means the following:

- (i) Medical and psychiatric evaluation;
- (ii) Expert witness fees and expenses;
- (iii) Interpreters for languages not commonly spoken;
- (iv) Polygraph, forensic, and other scientific tests; and
- (v) Any other non-routine expense the City of Cheney Municipal Court finds necessary and proper for the investigation, preparation, and presentation of a case.

2. Performance Review. Annually, the City shall conduct a performance review of the Public Defender. The scope of the performance review is intended to evaluate the Public Defender's case load and the professional services rendered pursuant to the Scope of Work.

3. Term of Contract. This Contract shall be in full force and effect on May 1, 2021, following execution of this Agreement and shall remain in effect for a period of five (5) years until terminated by either Party.

Either Party may, without cause, terminate this Agreement by sixty (60) days' advance written notice to the other Party. In the event of such termination, the City shall pay the Public Defender for all work previously authorized and satisfactorily performed prior to the termination date.

4. Compensation. The Public Defender is retained to provide public defense services as set forth in the Scope of Work for the anticipated amount of \$3,700.00 per month for all services (the

“**Compensation**”) including travel, telephones, law library use including electronic research, financial accounting, case management systems, computers and software, office space and supplies, training, compliance with all applicable standards and contract management, and use of private investigator, as appropriate. Payment of Compensation is determined as follows: (1) the total amount of \$2,200.00 per month from the City General Fund and (2) \$1,333.33 per month payable through Office of Public Defense grant funds obtained by the City. The Parties acknowledge the City will exercise best efforts to obtain grant funds as set forth in subsection (2) including timely advising the Public Defender of submitted grants and award of funds for the Scope of Work. Nothing contained herein shall increase the obligation of the General Fund to pay Compensation, unless agreed otherwise. The Public Defender is an independent contractor and shall be responsible for the payment of all federal and state taxes due and owing on the Scope of Work.

5. **Payment.** The Public Defender shall be paid monthly upon presentation of an invoice to the Finance Director.

The City reserves the right to withhold payment under this Agreement, which is determined in the reasonable judgment of the Mayor or designee to be noncompliant with the Scope of Work, City standards, City ordinances, or federal or state standards.

6. **Notice.** Notice shall be given in writing as follows:

If to the City of Cheney

City of Cheney
Attn: Chris Grover, Mayor
609 2nd Street
Cheney, WA 99004

If to the Public Defender

Karen S. Lindholdt
1310 W. Dean Ave.
Spokane, WA 99201

7. **Applicable Laws and Standards.** The Parties, in the performance of this Agreement, agree to comply with all applicable federal, state, and local laws, ordinances, and regulations.

8. **Relationship of the Parties.** It is understood, agreed, and declared that the Public Defender shall be independent and not the agent or employee of the City, that the City is interested in only the results to be achieved, and that the right to control the particular manner, method, and means in which the services are performed is solely within the discretion of the Public Defender. Any and all employees who provide services to the City under this Agreement shall be deemed employees solely of the Public Defender. The Public Defender shall be solely responsible for the conduct and actions of all employees under this Agreement and any liability that may attach thereto.

9. **State and Federal Taxes.** The City will not:

- Withhold FICA (Social Security and Medicare taxes) from Public Defender’s payments or make FICA payments on Public Defender’s behalf;
- Make state or federal unemployment compensation contributions on Public Defender’s behalf; or
- Withhold state or federal income tax from Public Defender’s payments.

Public Defender shall pay all taxes incurred while performing services under this Agreement, including all applicable income taxes and, if Public Defender is not a corporation, self-

employment (Social Security) taxes. Upon demand, Public Defender shall provide the City with proof that such payments have been made.

10. **Fringe Benefits.** Public Defender understands that neither Public Defender nor Public Defender's employees or contract personnel are eligible to participate in any City employee pension, health, vacation pay, sick pay, or other fringe benefit plan.

11. **Workers' Compensation.** The City shall not obtain workers' compensation insurance on behalf of Public Defender or Public Defender's employees. If Public Defender hires employees to perform any work under this Agreement, Public Defender will cover them with workers' compensation insurance and provide the City with a certificate of workers' compensation insurance before the employees begin the work.

12. **Unemployment Compensation.** The City shall make no state or federal unemployment compensation payments on behalf of Public Defender or Public Defender's employees or contract personnel. Public Defender will not be entitled to these benefits in connection with work performed under this Agreement.

13. **Records.** The City or State Auditor or any of their representatives shall have full access to and the right to examine during normal business hours all of the Public Defender records with respect to all matters covered in this contract. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and record of matters covered by this contract for a period of three (3) years from the date final payment is made hereunder.

14. **Insurance.** During the term of the contract, the Public Defender shall maintain in force, at its own expense, Professional Liability Insurance with a combined single limit of not less than \$1,000,000.00 annual aggregate as set forth on the attached insurance certificate. This is to cover damage caused by the negligent acts related to the professional services to be provided under this Agreement. The coverage must remain in effect for at least two (2) years after the contract is completed. The City agrees to reimburse the Public Defender the difference in cost between Professional Liability Insurance in the amount of \$100,000 annual aggregate and \$1,000,000.00 annual aggregate upon the presentation of an invoice by the Public Defender.

There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without thirty (30) days' written notice from the Public Defender or its insurer(s) to the City.

As evidence of the insurance coverages required by this contract, the Public Defender shall furnish acceptable insurance certificates to the City at the time the Public Defender returns the signed contract. The certificate shall specify all of the parties who are additional insured, and will include applicable policy endorsements, the thirty (30) day cancellation clause, and the deduction or retention level. Insuring companies or entities are subject to City acceptance. If requested, complete copies of insurance policies shall be provided to the City. The Public Defender shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

15. **Indemnification and Hold Harmless.** Each Party shall indemnify and hold the other, its officers, employees, agents, and volunteers harmless from and against any and all claims, demands, orders, decrees, or judgments for injuries, death, or damage to any person or property arising or resulting from any negligent or intentional act or omission on the part of said Party or its agents, employees, or volunteers in the performance of this Agreement.

16. **Waiver.** No officer, employee, agent, or other individual acting on behalf of either Party has the power, right, or authority to waive any of the conditions or provisions of this Agreement. No waiver in one instance shall be held to be waiver of any other subsequent breach or nonperformance. All remedies afforded in this Agreement or by law shall be taken and construed as cumulative, and in addition to every other remedy provided herein or by law. Failure of either Party to enforce at any time any of the provisions of this Agreement or to require at any time performance by the other Party of any provision hereof shall in no way be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof.

17. **Assignment, Delegation, and Use of Interns or Associates.** Neither Party shall assign, transfer, or delegate any or all of the responsibilities of this Agreement or the benefits received hereunder without first obtaining the written consent of the other Party. Notwithstanding the above, the Public Defender may, when periodically unavailable, delegate the responsibilities herein to a licensed Washington attorney or a legal intern with limited authorization to practice law as provided for by Washington State Supreme Court APR 9, provided the above persons are knowledgeable in the practice of criminal law and maintain similar office and contact information as the Public Defender. Notwithstanding any delegation, the Public Defender shall be responsible for the services provided hereunder to include devoting such time as is necessary to address matters on the dockets of the City of Cheney Municipal Court.

18. **Subcontracts.** Except as otherwise provided herein, the Public Defender shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining written approval of the City.

19. **Confidentiality.** The Public Defender may from time to time receive information which is deemed by the City to be confidential. The Public Defender shall not disclose such information without the express consent of the City or upon order of a Court of competent jurisdiction.

20. **Jurisdiction and Venue.** This Contract is entered into in Spokane County, Washington. Venue shall be in Spokane County, State of Washington. The City and Public Defender agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in questions between them arising out of or relating to this Agreement or the breach thereof to non-binding mediation unless the Parties mutually agree otherwise.

21. **Entire Agreement.** This written Agreement constitutes the entire and complete Agreement between the Parties and supersedes any prior oral or written agreements. This Agreement may not be changed, modified, or altered except in writing signed by the Parties hereto.

22. **Anti-kickback.** No officer or employee of the City, having the power or duty to perform an official act or action related to this Agreement, shall have or acquire any interest in this Agreement, or have solicited, accepted, or granted a present or future gift, favor, service, or other thing of value from any person with an interest in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement this _____ day of _____, 2021.

CITY OF CHENEY:

PUBLIC DEFENDER:

Chris Grover, Mayor

Karen S. Lindholdt, Attorney

ATTEST:

APPROVED AS TO FORM:

Cindy Niemeier, City Clerk

Stanley M. Schwartz, City Attorney