

**AGREEMENT FOR TOURISM PROMOTION**  
**Cheney Merchants Association**  
**Mayfeswt**

THIS AGREEMENT is made by and between the City of Cheney, a municipal corporation of the State of Washington (the "**City**") and Cheney Merchants Association (the "**Contractor**"). The City and Contractor are each sometimes referred to as a "**Party**" and together to as the "**Parties**."

**BACKGROUND**

A. The City, through RCW 67.28 et seq. and RCW 36.100.040, as applicable, collects a special excise tax on the sale or charge made for the furnishing of lodging (the "**Lodging Tax**"). The Lodging Tax is pledged to the City for (i) tourism marketing; (ii) marketing and operations of special events and festivals designated to attract tourists; (iii) supporting the operations and capital expenditures of tourism related facilities owned or operated by the City; (iv) supporting the operations of tourism related facilities owned or operated by nonprofit organizations; or (v) acquisition of tourism related facilities.

B. The Lodging Tax may also be used for "tourism promotion" and acquisition or operating of "tourism-related facilities."

C. As provided for in RCW 67.28.080(6), State law defines "tourism promotion" as "activities, operations and expenditures designed to increase tourism, including but not limited to advertising, publicizing or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding the marketing of or the operation of special events and festivals designed to attract tourists."

D. State law also defines "tourism related facilities" as "real or tangible personal property with a usable life of three or more years . . . [that is] (1) owned by a public entity; (2) owned by a non-profit organization described under Section 501(c)(3) of the Federal Internal Revenue Code of 1986, as amended or owned by a non-profit organization described under Section 501(c)(6) of the Federal Internal Revenue Code of 1986, as amended, a business organization, destination marketing organization, Main Street organization, lodging association or chamber of commerce; and (3) used to support tourism, performing arts, or to accommodate tourist activities," all as described in RCW 67.28.080(7).

E. To fairly and reasonably allocate the Lodging Tax, the City established a Lodging Tax advisory committee (the "**Advisory Committee**") to review and make recommendations to the City for final determination of Lodging Tax revenue disbursement.

F. This Agreement implements the recommendations of the Advisory Committee and sets forth the terms and conditions for use of the Lodging Tax.

AGREEMENT

The Parties agree as follows:

1. **Work to Be Performed.** The Contractor will furnish all equipment, supplies, material and labor to provide: tourism promotion and operation of tourism related facilities, as described above and on the attached Exhibit A (hereinafter, "**Scope of Work**").

The City's mayor (the "**Mayor**") or designee shall administer and be the primary contact for Contractor.

A. **Modifications.** The City may modify this Agreement and order changes in the work whenever necessary or advisable. The Contractor will accept modifications when ordered in writing by the Mayor or Mayor's designee. Compensation for such modifications or changes shall be as mutually agreed between the Parties. Upon notice from the City, Contractor shall promptly cure any failure in performance under this Agreement without additional compensation.

B. **Representations.** By execution of this Agreement, Contractor represents that the Lodging Tax will be used according to the Scope of Work in accordance with federal, state, and local laws, rules, and regulations. No substitutions of purpose or change in the use of the funds shall be made without the written consent of the City.

2. **Term of Contract.** This Agreement shall be in full force and effect upon the Effective Date and shall terminate on December 31, 2022 ("**Initial Term**"). Either Party may terminate this Agreement by sixty (60) days written notice to the other Party. If Contractor is in default or breach of any term, or condition of this Agreement, the City may terminate this Agreement upon five (5) days written notice. In the event of such termination, the City shall pay the Contractor for all work previously authorized and satisfactorily performed prior to the termination date.

3. **Compensation and Payment.** The City agrees to pay the Contractor **\$24,281**. The Contractor will be paid after receipt of the City receives an original fully executed contract from the Contractor. Payments shall be made within fifteen (15) days of receipt of the application.

The City reserves the right to withhold payment under this Agreement which is determined in the reasonable judgment of the Mayor to be noncompliant with the Scope of Work, federal, state or City laws, rules, or regulations or if there are insufficient Lodging Tax funds to disburse according to the discretion of the City.

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

TO THE CITY:

City of Cheney  
Attn: Cindy Niemeier  
609 2<sup>nd</sup> Street  
Cheney, WA 99004

TO THE CONTRACTOR:

Name: Cheney Merchants Association  
Attn: Douglas LaBar  
Address: 101 F Street  
Cheney, WA 99004

5. **Contractor's Reporting Requirements.** The Contractor shall submit a report to the City, before December 31, following the Initial Term that describes the actual number of people traveling for business or pleasure on a trip as a direct result of this Scope of Work: (a) away from their place of residence or business who stayed overnight in paid accommodations; (b) to a place 50 miles or more (one way) from their place of residence or business for either the day or overnight accommodation; or (c) from another country or state outside of their place of residence or business. **The report shall also provide copies of receipts for the funded activities.**

The above report shall be made available for public inspection. The City shall furnish copies of the report to the joint legislative audit and review committee and members of the Advisory Committee. Contractor, in consultation with the City, shall develop a survey or form that identifies the distance people have traveled for business or pleasure, whether they have stayed overnight in paid accommodations, whether they are attending an event sponsored or promoted by Contractor, and such other agreed information.

6. **Applicable Laws and Standards.** The parties, in the performance of this Agreement, agree to comply with all applicable Federal, State, Local laws, City ordinances, and regulations.

7. **Relationship of the Parties.** It is hereby understood, agreed and declared that the Contractor shall be an independent Contractor 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 Contractor. Any and all employees who provide services to the City under this Agreement shall be deemed employees solely of the Contractor. The Contractor shall be solely responsible for the conduct and actions of all employees under this Agreement and any liability that may attach thereto.

8. **Insurance.** Contractor shall purchase and maintain during the term of this Agreement a comprehensive general liability policy in the amount of \$1,000,000.00 per occurrence with the City as an additional named insured. A copy of the certificate shall be provided to the City. Notice of cancellation of such insurance shall be given to the City by Contractor's insurer.

9. **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 act or omission on the part of said Party or its agents, employees or volunteers in the performance of this Agreement.

10. **Assignment and Delegation.** 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.

11. **Jurisdiction, Venue and Dispute Resolution.** This Contract is entered into in Spokane County, Washington. Venue shall be in Spokane County, State of Washington. Prior to

initiating litigation, the parties shall engage in mediation where monetary damages are sought as a remedy. The cost of mediation shall be shared between the Parties. The mediator shall be jointly selected by the Parties or where there is no agreement by the Presiding Judge of the Superior Court.

12. **Cost and Attorney's Fees.** In the event a lawsuit is brought with respect to this Agreement, the prevailing Party shall be awarded its costs and attorney's fees in the amount to be determined by the Court as reasonable. Unless provided otherwise by statute, Contractor's attorney fees payable by the City shall not exceed the lump sum amount of this Agreement.

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

14. **Exhibits.** Exhibits attached and incorporated into this Agreement are:

- (i) **Exhibit A** - Scope of Work – Contractor's Proposal as accepted by the Advisory Committee and City.

15. **Ownership.** Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the City under this Agreement shall be the sole and absolute property of the City. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the City at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the City is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

16. **Public Records Act.** This Agreement and all public records associated with this Agreement shall be available from the City for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the City to respond to a request under the Act, as determined by the City, the Contractor agrees to make them promptly available to the City. If the Contractor considers any portion of any record provided to the City under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the City receives a request under the Act to inspect or copy the information so identified by the Contractor and the City determines that release of the information is required by the Act or otherwise appropriate, the City's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the City will release the requested information on the date specified.

The City has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The City shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The City shall not be liable to the Contractor for any records that the City releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

IN WITNESS WHEREOF, the parties have executed this Agreement this 8<sup>th</sup> day of March, 2022 (the "**Effective Date**").

CITY OF CHENEY:

CONTRACTOR:

\_\_\_\_\_  
Mayor, Chris Grover

\_\_\_\_\_  
Executive with signing authority

Tax I.D. No.: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk, Cindy Niemeier