

## **AGREEMENT FOR CITY PROSECUTOR LEGAL SERVICES**

THIS AGREEMENT is made by and between the City of Cheney, a code City of the State of Washington, hereinafter “City,” and Michael R. Addams, hereinafter “Attorney,” jointly referred to as “Parties.”

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

**1. Work to Be Performed.** The Attorney or partner/associate of the Attorney’s firm will provide all labor, services and material to satisfactorily perform the duties of City of Cheney City Prosecutor, generally described below as the “Prosecuting Attorney Services” or “Scope of Work.”

Prosecuting Attorney Services shall include the following: (a) prosecution of misdemeanor and gross misdemeanor offenses committed by adults and traffic offenses/infractions committed by adults and juveniles (pursuant to RCW 13.04.030(1)(e)(iii)) that are subject to the jurisdiction of the City of Cheney Municipal Court; (b) upon request, review of investigative police reports to determine whether criminal conduct occurred, whether there is sufficient evidence to prosecute and preparation of a summons and complaint; and (c) such other matters as agreed between the Parties.

Prosecuting Attorney, Mayor and/or City Administrator shall make reasonable attempts to communicate on a monthly basis issues of policy and community concern. The Prosecutor shall make every effort, as schedules permit, to meet with the Police Department periodically to briefly describe the efforts and issues of the Prosecutor’s Office and to answer questions from the officers. The prosecutor shall make reasonable attempts to communicate with the Police Chief and/or his designee concerning prosecution issues as appropriate as needed.

A. Administration. The City Administrator or designee shall administer this Agreement and be the primary contact for the Attorney.

B. Representations. The City has relied upon the qualifications of the Attorney in entering into this Agreement. By execution of this Agreement, Attorney 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. No substitutions of personnel shall be made without the written consent of the City. The Attorney shall be licensed to practice law in the state of Washington.

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

D. Office. The Attorney shall: (1) maintain an office in Spokane County and be available for contact by phone from 9 a.m. to 5 p.m. during business days; (2) be reasonably available by cell phone to answer inquiries and assist law enforcement activities; and (3) maintain

email and facsimile to receive and prepare information related to the duties herein.

E. Court Attendance. Attorney shall attend all sessions of Cheney Municipal Court. Attorney or Attorney's employee shall be present at the Cheney Municipal Court each Thursday while court is in session.

F. Discovery. Provide discovery information in the possession of the City that is delivered to Attorney as reasonably requested under Court Rules and other legal authority.

G. Appeals. No judicial appeal on behalf of the City shall be filed in the Superior Court, Court of Appeals or Washington State Supreme Court without the written authorization of the City Administrator. Appeals are to be performed by the Attorney unless circumstances dictate the assignment of the appeal proceedings to another party. The Attorney will receive compensation at a rate of \$150.00 per hour for work performed on assigned appeals.

H. Limitation of Practice. Attorney shall be entitled to engage in the private practice of law separate and apart from the duties under this Agreement. Neither Attorney nor any employee nor member of Attorney's law business shall engage in any activity adverse to the interests of the City, including but not limited to defense of cases in the Cheney Municipal Court.

I. Conflict of Interest. In the event Attorney shall have a conflict of interest, the City will provide a conflict prosecutor.

J. Annual Review. Annually, the terms of this Agreement shall be reviewed by the Attorney and City Administrator. Material adjustments or changes shall be presented to the City Council for review and approval.

**2. Term of Contract.** This Contract shall be in full force and effect upon execution of this Agreement and shall remain in effect until terminated by either Party.

Either Party may terminate this Agreement by sixty (60) days' written notice to the other Party. In the event of such termination, the City shall pay the Attorney for all work previously authorized and satisfactorily performed prior to the termination date.

**3. Compensation.** The City agrees to pay the Attorney an amount not to exceed \$3,558.30 per month, for an annual total of \$42,700.00. Attorney 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. Compensation for 2023 and beyond will be reviewed and determined annually as part of the budget development process.

**4. Payment.** The Attorney shall be paid monthly in arrears, without demand. If deemed necessary by the City, the Finance Director shall contact Attorney for submittal of invoice information.

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

TO THE CITY:  
Mark Schuller, City Administrator

TO THE ATTORNEY:  
Michael R. Addams, Attorney

(509) 498-9255  
City of Cheney  
609 2<sup>nd</sup> Street, Cheney, WA 99004

(509) 828-2771  
831 E. 33<sup>rd</sup> Ave, Spokane, WA 99201

**6. 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.

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

**8. Records.** The City or State Auditor, at the direction of the City, or any of their representatives, shall have full access to and the right to examine during normal business hours all of the Attorney 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 years from the date final payment is made hereunder.

**9. Insurance.** During the term of the contract, the Attorney shall maintain in force, at its own expense, Professional Liability Insurance with a combined single limit of not less than \$250,000.00 and an annual aggregate as set forth on the 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. As evidence of the insurance coverages required by this contract, the Attorney shall furnish acceptable insurance certificates to the City at the time the Attorney returns the signed contract.

**10. 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.

**11. 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.

**12. Assignment and Delegation.** No 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, except Attorney may delegate performance hereunder to others who are in practice with Attorney.

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

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

**15. Jurisdiction and Venue.** This Agreement is entered into in Spokane County, Washington. Venue shall be in Spokane County, State of Washington. The Parties 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.

**16. 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.

**17. 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 \_\_\_\_\_, 2022.

CITY OF CHENEY:

ATTORNEY:

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

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Cynthia L. Niemeier, City Clerk

\_\_\_\_\_  
City Attorney