

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (this "**Agreement**") is made and entered into as of this 1st day of August, 2023 by and among the CITY OF CHENEY, a non-charter code city, ("**City**") and ANDY and CHERYL LOUIE, and the marital community comprised thereof, (collectively, "**Louie**"). The City and Louie may be collectively referred to herein as the "**Parties**".

### RECITALS

A. The property which is the subject of this Agreement is commonly known as the Motel Cheney and is located at 1502 1st Street, Cheney, WA 99004, Spokane County Tax Parcel # 13124.7101 (the "**Property**"). Louie purchased the Property in 2019.

B. On August 23, 2022, the structure located at the Property was destroyed by a fire. The Cheney Fire Department attempted to suppress the fire, but ultimately determined that the fire could not be fully extinguished unless emergency abatement actions were taken. Specifically, the Cheney Fire Marshal determined that remaining portions of the building needed to be demolished with the aid of excavation equipment (the "**Emergency Abatement**"). The City gave Louie written notice of the Emergency Abatement and, on August 24, 2022, the remaining structure was demolished by a contractor hired by the City.

C. As a result of the above, a significant amount of debris and a partial foundation remained on the Property. Given the age of the prior structure, the Spokane Regional Clean Air Agency ("**SRCAA**") informed the Parties that the debris is assumed to contain asbestos and must be removed in accordance with their requirements and regulations.

D. More than 60 days elapsed after the date of the fire, but large piles of debris and the partial foundation of the structure remained on the Property. On November 15, 2022, the City served Louie with a Notice and Order to Abate ("**Notice**") in accordance with CMC 17.18.080. The Notice declared a nuisance violation on the Property and ordered Louie to abate the nuisance no later than November 25, 2022. Louie was informed that failure to abate the nuisance could result in civil penalties, infractions, abatement by the City at Louie's expense, and a lien being placed on the Property. The Notice further notified Louie of a 20-day time limit to appeal to the hearing examiner. Louie did not appeal the Notice.

E. On or about March 9, 2023, the City filed a Complaint for Abatement of Nuisance, Warrant of Abatement, and Injunctive Relief ("**Complaint**") against Louie in Spokane County Superior Court, Case Number 23-2-00946-32 (the "**Lawsuit**"). The Complaint alleged that the conditions on the Property constituted a nuisance and requested that the Court issue a warrant authorizing the City to abate the nuisance and ordering that the costs of all enforcement

actions and abatement (including attorney fees) be assessed against Louie and constitute a lien on the Property.

F. On May 9, 2023, Louie filed a *pro se* answer to the Complaint, generally denying responsibility for the condition of the Property and claiming that the City should not have performed the Emergency Abatement after the fire.

G. On or about July 12, 2023, Louie informed the City that the abatement work on the Property had been completed. The City and SRCAA inspected the Property and determined that the abatement work performed by Louie is acceptable.

H. Pursuant to Chapter 17.18 of the Cheney Municipal Code, the City alleges that it maintains a claim to recover from Louie the costs incurred by the City to enforce the Code and pursue abatement of the above-described nuisances on Louie's Property. Said costs include, but are not limited to, the hiring of an excavation company to perform the Emergency Abatement, attorneys' fees, and court costs (the "**Abatement Costs**").

I. In order to avoid additional cost, expense, and uncertainty of litigation and to conclude this matter amicably, the Parties desire to resolve any and all disputes between them related to the Property, the Emergency Abatement, the Abatement Costs, and the Lawsuit, pursuant to the terms and conditions of this Agreement.

### AGREEMENT

In consideration of the Recitals (which are hereby incorporated into and shall be deemed part of this Agreement), covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, it is agreed by and between the Parties as follows:

1. *Dismissal of Lawsuit, Case No. 23-2-00946-32*

Upon execution of this Agreement, the City and Louie shall file a stipulation with the Spokane County Superior Court in the form attached hereto as **Exhibit A**, dismissing the Lawsuit in its entirety, with prejudice and without an award of costs or attorneys' fees to any party.

2. *Mutual Release*

Effective upon execution of this Agreement, the City and Louie, on behalf of their agents, representatives, employees, subsidiaries, successors and assigns, hereby mutually release, acquit, and forever discharge each other, including all of their agents, representatives, employees, subsidiaries, attorneys, successors and assigns, from any and all past or present civil claims, demands, actions, suits, damages, losses, penalties and expenses, known or unknown, fixed or contingent, which are in any way related to the Property, the Emergency Abatement, the Abatement Costs, and the Lawsuit, including any additional claims or counterclaims that could

have been asserted by either party in the Lawsuit.

3. *No Admission of Liability*

The Parties understand and agree that this Agreement reflects a compromise of disputed claims. No monetary payment is being exchanged in consideration for the dismissal and releases required pursuant to this Agreement. As such, this Agreement shall not be construed as an admission by any party of liability whatsoever to any other party.

4. *Successors and Assigns*

This Agreement is made for the protection and benefit of the Parties hereto, their successors and assigns, and all other parties thereafter dealing with, or who may acquire an interest in the Property, and shall bind the respective heirs, executors, administrators and assigns of the Parties.

5. *Entire Agreement*

This Agreement contains the entire agreement of the Parties and there are no other agreements between the Parties express or implied except as set forth or expressly referenced herein. This Agreement may not be changed orally but only by agreement in writing signed by the party against whom enforcement, waiver, change, modification, or discharge is sought.

6. *Governing Law/Venue*

This Agreement shall be governed by the laws of the State of Washington without regard to its conflict of law provisions. Any action to enforce the terms of this Agreement shall lie in any court of competent jurisdiction located in Spokane County, Washington.

7. *Representation*

The Parties affirm and acknowledge that they have read this Agreement in its entirety, had sufficient opportunity to review and discuss it with counsel, and fully understand and agree to the meaning of its terms and the contents herein. The Parties have not entered into this Agreement under any undue influence.

8. *Rules of Construction.*

8.1 Each party and/or counsel for each party have reviewed this Agreement and accordingly the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. Each party participated jointly in the negotiation and preparation of this Agreement, and each has had the opportunity to obtain the advice of legal counsel and to review, comment upon, and redraft this Agreement. Accordingly, this Agreement shall be construed as if the Parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against any one Party and in favor of the other.

8.2 In the event that one or more of the provisions or portions of this Agreement is determined to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

8.3 Any titles, headings or captions of paragraphs contained in this Agreement are for convenience and reference only and the words contained in them shall not be held to expand, modify, amplify, or aid in the interpretation, construction or meaning of this Agreement.

9. *Counterparts, E-Mail and Facsimile*

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. This Agreement shall be effective upon execution of one or more of such counterparts by each of the Parties hereto. E-Mail or facsimile transmission of any signed original document (and retransmission of any signed facsimile transmission) shall be the same as delivery of an original document.

10. *Authority*

Each person executing this Agreement on behalf of another person or entity represents and warrants to all other signatories hereto that he or she is fully authorized to execute and deliver this Agreement on behalf of such person or entity.

11. *Attorneys' Fees*

In the event of a dispute under this Agreement, whether or not suit is initiated, the prevailing party shall be entitled to recover from the other party the fees of its attorneys and other costs incurred, including such fees as are incurred in any trial, on appeal and in any bankruptcy proceeding.

The Parties have executed this Agreement as of the date set forth above.

*[Signature page follows]*

CITY OF CHENEY

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

Attest:

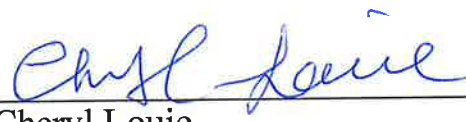
By \_\_\_\_\_  
City Clerk, Cynthia Niemeier

Approved as to form:

By \_\_\_\_\_  
City Attorney, Michael J. Kapaun

ANDY AND CHERYL LOUIE

By:  \_\_\_\_\_  
Andy Louie

By:  \_\_\_\_\_  
Cheryl Louie