

AGREEMENT FOR PUBLIC RECORDS LEGAL SERVICES

THIS AGREEMENT is made by and between the City of Cheney, a code City of the State of Washington, hereinafter "City," and the Cedar Law Group, PLLC, acting through Sara Di Vittorio, 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, Sara Di Vittorio, will provide all labor, services, and material to satisfactorily perform the duties of City of Cheney Public Records Attorney, generally described below as the "Public Records Attorney" or "Scope of Work." Ms. Di Vittorio may access and delegate work under this contract to the staff and attorneys at Cedar Law, but she shall be considered the primary provider of legal services under this contract.

Public Records Attorney shall act on behalf of the City in regard to the following matters, to wit; representing and advising the City on all matters related to public records. This may include, but is not limited to, policy development, training personnel, records retention and public disclosure request review, legal updates for public disclosure laws, contract language review, and litigation. On occasion, the Attorney will be required to be on-site in the City of Cheney or appear in person for court proceedings.

Public Records Attorney, Mayor, and/or City Administrator shall make reasonable attempts to communicate on an as-needed basis, issues of policy and process concern. The Attorney shall make every effort to meet with the Records Manager periodically to answer questions from the Records Manager and provide updates needed for procedures.

- 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 Scope of Work. 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) be reasonably available by furnished cell phone to answer inquiries and assist public records activities; and (2) maintain a City-provided email address to receive and prepare information related to the duties herein.
- E. Court Attendance. Attorney or her designee shall attend all sessions of court when representing the City in litigation.
- 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.
- H. Agreements or Settlements. Attorney shall consult with City prior to entering into any agreement with third parties on behalf of City. City shall promptly respond to any request of Attorney to provide authority to settle any dispute.
- I. Limitations of Practice. Attorney shall be entitled to engage in 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.
- 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 Agreement. This Agreement 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 providing 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.

Upon termination, City documents and property will be returned upon receipt of payment for outstanding fees and costs. Attorney files relating to the work will be retained by the Attorney in accordance with the Washington State Retention Schedule and will be produced upon a public records request at no cost to the City. City termination of services will not relieve the City of the responsibility for payment of legal services rendered and costs or expenses incurred by Attorney before termination.

3. **Compensation.** The City agrees to pay the Attorney the amount of Three Hundred Dollars (\$300) per hour for work performed. When travel is required, the Attorney will be reimbursed for actual travel costs with a food per diem of Fifty Dollars (\$50) per day, but no compensation for the hours required for the travel. Additionally, City will provide a smart phone with City email address for purposes of records retention. 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.
4. **Payment.** The Attorney shall submit to City at least monthly an itemized invoice of all time and expenses for which Attorney requests payment. The City, upon approval of the invoice, shall pay the approved sum following the City's usual procedure.
5. **Notice.** Notice shall be given in writing as follows:

TO THE CITY:

Mark Schuller, City Administrator
(509) 498-9255
City of Cheney
609 2nd Street, Cheney, WA 99004

TO THE ATTORNEY:

Sara Di Vittorio, Attorney
(425) 388-6343
The Cedar Law Group, PLLC
113 Cherry Street, Seattle, WA 98104

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 Agreement. 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 Agreement for a period of three (3) years from the date final payment is made hereunder.
9. **Insurance:** During the term of the Agreement, Attorney shall maintain in force, at its own expense, Professional Liability Insurance with a combined single limit of not less than

\$250,000 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 Agreement is completed. As evidence of the insurance coverages required by this Agreement, the Attorney shall furnish acceptable insurance certificates to the City at the time the Attorney returns the signed Agreement.

- 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.

18. Th City Right to Arbitrate. If the City disagrees with the amount of Attorney fees, the matter shall first be discussed with the Attorney. The Attorney will endeavor to resolve the matter, mutually, with minimal inconvenience or formality. In the event a fee dispute is not readily resolved, the City has the right to request arbitration under supervision of the Washington State Bar Association. The Attorney will participate in that process.

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

CITY OF CHENEY:

ATTORNEY:

Chris Grover, Mayor

By: _____
Sara Di Vittorio, Attorney

ATTEST:

APPROVED AS TO FORM:

Cynthia L. Niemeier, City Clerk

Stanley M. Schwartz, City Attorney