

**PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF CHEYENNE, AND
WOODHOUSE RODEN AMES & BRENNAN, LLC**

1. **Parties.** The parties to this Contract are the CITY OF CHEYENNE (City), whose address is: 2101 O'Neil Avenue, Cheyenne, Wyoming, 82001, and Woodhouse Roden Ames & Brennan, LLC ("WRAB" or "Contractor"), whose business address is currently: Woodhouse, 1912 Capitol Avenue, 5th Floor, Cheyenne, Wyoming 82001.
2. **Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which the Contractor agrees to provide half-time (1/2 of full-time) City Public Defender services (legal counsel) to the City of Cheyenne.
3. **Term of Contract.** This Contract is effective when all parties have executed it (Effective Date). The performance period of the Contract is from July 1, 2022 and running month to month until either party wishes to terminate services. All services shall be completed during this term.
4. **Payment.** The City agrees to pay the Contractor for the services described in Section 5, below, at a flat rate of seven thousand, two hundred dollars (\$7,200.00) a month. The total payment under this Contract shall not exceed eighty-six thousand, four hundred dollars (\$86,400.00) for any one (1) year period. Should the Contractor fail to perform in a manner consistent with the terms and conditions set forth in this Contract, payment under this Contract may be withheld until such time as the Contractor performs its duties and responsibilities to the satisfaction of the City.

A. Travel.

Air Travel. Any air travel expenses are not reimbursable.

Personal Vehicle. Any mileage expenses are not reimbursable.

Car Rental. Any car rental expenses are not reimbursable.

B. Lodging.

Any lodging expenses are not reimbursable.

C. Case-specific Extraneous Expenses.

The City agrees to provide payment on behalf of the City of Cheyenne for the Contractor's extraneous expenses at cost with proper documentation in the form of logs, original receipts, or other proof of payment with prior approval from the Mayor's Office and/or City Attorney's Office.

5. **Responsibilities of Contractor.** The Contractor agrees to provide part-time legal services as City Public Defender (legal counsel) to appear and defend from prosecution any Defendants assigned to a public defender by the Cheyenne Municipal Court pursuant to, but not limited to, Cheyenne City Ordinance. During the performance of these duties, the

Contractor agrees to abide by the Wyoming Rules of Professional Conduct. While performing these duties, the Contractor will be considered a state employee for purposes of coverage and representation under the Wyoming Governmental Claims Act, Wyo. Stat. §§ 1-39-101 through 121, and the City's self-insurance program through the Wyoming Association of Risk Management (WARM). The Contractor must be, and remain, a member of the Wyoming State Bar in good standing.

6. **Responsibilities of City.** The City agrees to pay the Contractor in accordance with Section 4 above.

7. **Special Provisions.**

A. **Monitoring Activities.** The City shall have the right to monitor all Contract related activities of the Contractor. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress, to examine the books, ledgers, documents, papers, and records pertinent to this Contract; and to observe personnel in every phase of performance of Contract related work.

B. **No Finder's Fees.** No finder's fee, employment City fee, or other such fee related to the procurement of this Contract shall be paid by either party.

C. **Conflicts of Interest.** The Contractor shall not engage in providing consultation or representation of clients, agencies or firms which may constitute a conflict of interest which may result in a disadvantage to the City or a disclosure which may adversely affect the interests of the City. The Contractor shall notify the City of any potential or actual conflicts of interest arising during the course of the Contractor's performance under this Contract. This Contract may be terminated in the event a conflict of interest arises. Termination of this Contract will be subject to a mutual settlement of accounts. In the event this Contract is terminated under this provision, the Contractor shall take steps to ensure that all files, evidence, evaluations and data are provided to the City or its designee. This provision does not prohibit or affect the Contractor's ability to engage in consultations, evaluations or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.

A conflict of interest warranting termination of this Contract may include, but is not necessarily limited to, acting on behalf of a client in an adversarial proceeding against the CITY OF CHEYENNE, its agencies, boards, commissions, or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition or quo warranto.

D. **Counterparts.** This Contract may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Contract. Delivery by the Contractor of an originally signed counterpart of this Contract by facsimile or PDF shall be

followed up immediately by delivery of the originally signed counterpart to the City.

8. General Provisions.

- A. Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed by all parties to this Contract.
- B. Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. Assignment Prohibited and Contract Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof for collateral for any financial obligation without the prior written permission of the City.
- D. Audit and Access to Records.** The City and its representatives shall have access to any books, documents, papers, electronic data and records of the Contractor which are pertinent to this Contract. The Contractor shall immediately, upon receiving written instruction from the City, provide to any independent auditor or accountant all books, documents, papers, electronic data and records of the Contractor which are pertinent to this Contract. The Contractor shall cooperate fully with any such independent auditor or accountant during the entire course of any audit authorized by the City.
- E. Availability of Funds.** Each payment obligation of the City is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation, and which may be limited for any reason including, but not limited to actions of the governing body of the City of Cheyenne, or administrative action. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by the City at the end of the period for which the funds are available. The City shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- F. Award of Related Contracts.** The City may award supplemental or successor contracts for work related to this Contract or may award contracts to other contractors for work related to this Contract. The Contractor shall cooperate fully with other contractors and the City in all such cases.

- G. Certificate of Good Standing.** The Contractor shall provide to the City proof of an active Bar License with the Wyoming State Bar, before performing work under this Contract. The Contractor shall ensure that all annual filings and corporate taxes due and owing to the Secretary of State's office are up-to-date before signing this Contract.
- H. Compliance with Laws.** The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.
- I. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, data and other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the City for its release. If and when the Contractor receives a request for information subject to this Contract, the Contractor shall notify the City within ten (10) days of such request and shall not release such information to a third party unless directed to do so by the City.
- J. Entirety of Contract.** This Contract, consisting of eight (8) pages, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- K. Ethics.** The Contractor shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing the Contractor's profession.
- L. Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the City and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Contract or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Contract.
- M. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- N. Indemnification.** The Contractor shall release, indemnify, and hold harmless the City, and their officers, agents, and employees from any and all claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out

of the Contractor's failure to perform any of the Contractor's duties and obligations hereunder or in connection with the negligent performance of the Contractor's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of the Contractor's negligence or other tortious conduct.

- O. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the CITY OF CHEYENNE for any purpose, except as set out in Section 5 above. Consistent with the express terms of this Contract, the Contractor shall be free from control or direction over the details of the performance of services under this Contract. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the CITY OF CHEYENNE or to incur any obligation of any kind on behalf of the CITY OF CHEYENNE. The Contractor agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance, or similar benefits available to CITY OF CHEYENNE employees will inure to the benefit of the Contractor or the Contractor's agents or employees as a result of this Contract.
- P. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail or delivery in person at the address provided under this Contract.
- Q. Notice of Sale or Transfer.** The Contractor shall provide the City with notice of any sale, transfer, merger, or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notices provision of this Contract and, when possible and lawful, in advance of the transaction. If the City determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Contractor's obligations under this Contract, then the City may, at its discretion, terminate or renegotiate the Contract.
- R. Ownership and Return of Documents and Information.** The City is the official custodian and owns all documents, data compilations, reports, computer programs, photographs, data, field notes, samples, specimens, materials, chronologies and other work provided to or produced by the Contractor in the performance of this Contract. Once the case has concluded at the trial court, or upon termination of services, for any reason, the Contractor agrees to return all such original and derivative information and documents to the City in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon the City's verified receipt of such information, the Contractor agrees to physically and electronically destroy any residual City-owned data, regardless of format, and any other storage media or areas containing such

information. The Contractor agrees to provide written notice to the City confirming the destruction of any such residual City-owned data.

- S. **Prior Approval.** This Contract shall not be binding upon either party until this Contract has been fully executed, approved as to form by the City Attorney, filed with the City Clerk, approved by the Governing Body of the City, and signed by the Mayor of the City of Cheyenne.
- T. **Publicity.** Any publicity given to the projects, programs or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Contractor, shall identify the City as the sponsoring City and shall not be released without prior written approval from the City.
- U. **Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- V. **Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the CITY OF CHEYENNE and the City expressly reserve sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the CITY OF CHEYENNE has sovereign immunity and only the CITY OF CHEYENNE has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.
- W. **Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- X. **Termination of Contract.** This Contract may be terminated, without cause, by the City upon seven (7) days written notice. This Contract may be terminated by the City immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract.
- Y. **Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.
- Z. **Time is of the Essence.** Time is of the essence in all provisions of this Contract.

AA. Titles Not Controlling. Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.

BB. Waiver. The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

9. Signatures. The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The Effective Date of this Contract is the date of the signature last affixed to this page.

CITY:
CITY OF CHEYENNE

Patrick Collins, Mayor

Date

Attest:

Kristina F. Jones, City Clerk

Date

CONTRACTOR:
WOODHOUSE RODEN AMES & BRENNAN, LLC

Partner

Date

CITY ATTORNEY'S OFFICE: APPROVAL AS TO FORM

Stefanie Boster, City Attorney

Date