

CITY OF CLE ELUM
PROFESSIONAL SERVICES CONTRACT
FOR PROSECUTION SERVICES

This is a contract between the City of Cle Elum ("City") and Tony Swartz of Ellensburg, WA ("Attorney") whereby the Attorney, in return for stated consideration, agrees to provide prosecution services to the City of Cle Elum.

NOW THEREFORE,

The parties AGREE as follows:

1. **Scope of Services.** The Attorney will provide misdemeanor and gross misdemeanor prosecution services for the City's criminal cases filed in Cle Elum Municipal Court. The Attorney will attend and represent the City at all pre-trial hearings, probation violations and review hearings, all bench and jury trials, but will not attend first appearances or arraignments.

The Attorney shall provide and be responsible for any and all office expenses related to the representation of the City, as defined above, including office supplies and equipment and the compensation of any necessary staff.

The Attorney shall screen cases for legal sufficiency and will utilize independent judgment following the Prosecutorial Standards set forth at RCW 13.40.077 and the Rules for Professional Conduct Rule 3.8 in determining whether to file or pursue prosecution of a criminal charge.

The Attorney shall have final authority on the disposition and sentencing of all cases in which the Attorney represents the City. The exercise of prosecutorial discretion shall not be considered a breach of the Attorney's duties under this Contract.

The Attorney shall meet with the City Attorney and Chief of Police at reasonable intervals as requested to review the status of case prosecutions, outstanding legal issues and to address such other matters as may be necessary to the effective provision of prosecution services.

The Attorney will represent the City in appeals from City cases to Superior Court and the appellate courts, which services shall be compensated under section 4(B) of this Contract. The Attorney shall not represent the City on infraction cases or any civil matters.

All costs associated with the prosecution of criminal cases, such as witness fees (expert or factual), records checks, and court and jail costs, shall be paid for or provided by the City.

All costs or fees not contemplated by this Contract which may arise during the term of the Contract shall be brought to the City's attention by the Attorney. The parties shall review this Contract as a whole and make an attempt to determine whether the unanticipated cost should be paid by the City or the Attorney. If the parties cannot agree, then they shall consider the ordinary course of business between an attorney and client, including whether the cost is usually paid by the client or the attorney. If the parties still cannot reach an agreement, they shall arbitrate the matter as provided below.

2. **Assignment of Cases to a Special Prosecutor.** The Attorney reserves the right to appoint a special prosecutor to handle cases assigned to the Attorney. At no time shall the attorney assign more than fifty percent (50%) of the pending City cases, except that a special prosecutor may be appointed to handle all of the cases scheduled for hearing or trial on a particular date if the Attorney is unavailable to attend court on that date.

Any special prosecutor appointed shall act under the direction and supervision of the Attorney and shall have full authority to perform the services called for by this Contract. Any special prosecutor appointed shall be an attorney licensed to practice in the State of Washington and be in good standing with the Washington State Bar Association.

The City may object to the use of a specific special prosecutor. The City will notify the Attorney of such an objection in writing and shall set forth the City's reasons for its objection, which reasons must be objectively reasonable. No later than fourteen (14) days after receiving notice of an objection from the City, the Attorney shall discontinue the use of the special prosecutor objected to by the City.

3. **Term of Contract.** This contract shall be effective January 1, 2016 and shall terminate on December 31, 2016, unless sooner terminated in writing by either party on 60 days notice.

4. **Compensation.**

- A. **General Prosecution Services.** Beginning January 1, 2016, the City shall pay the Attorney Twenty-Five Hundred Dollars (\$2,500.00) per month as compensation for the Attorney's services defined by this Contract.
- B. **Appellate Services (Superior Court, Court of Appeals, and State Supreme Court).** The City shall pay the Attorney One Hundred twenty-five Dollars (\$125.00) per hour (plus costs) as compensation for any appellate work performed under this Contract. The Attorney will invoice the City on a monthly basis for any such appellate work. The Attorney shall obtain the approval of the City Attorney prior to working more than five (5) hours on any particular appellate case.
- C. **Reimbursement for Assignments to a Special Prosecutor.** The City shall reimburse the Attorney an amount not to exceed Three Thousand

If either party breaches this Contract, that party shall be liable for any direct damages incurred by the non-breaching party, but shall not be liable for consequential damages. If either party is forced to enforce or defend this Contract in a court of law, the substantially prevailing party shall be entitled to all costs and reasonable attorney fees from the other party.

8. **Additional Private Practice.** Both parties acknowledge that the City is a client of the Attorney with regard to the rendering of criminal prosecution services only and that the Attorney and his firm have the right to continue representing other clients in the course of their civil practice. The parties specifically agree that the Attorney and his firm may from time to time represent other clients relative to civil issues adverse to the City, such as land use, water rights or other civil matters. The City specifically waives any and all conflicts of interest in such cases.

9. **Professional Requirments.** The attorneys of the law firm shall be licensed to practice law in the State of Washington and shall remain in good standing with the Washington State Bar Association throughout the length of this contract.

10. **Ownership of Work Product.** All information, records, files, and court documents produced under this contract shall belong to the City.

11. **Liability Insurance.** The Attorney shall, at its own expense, maintain professional liability insurance in the amount of \$1,000,000.00 per occurrence.

12. **Independent Contractor.** The Attorney shall at all times perform his duties and responsibilities as an independent contractor and shall not be entitled to any benefits except as provided herein.

13. **Indemnification.** The Attorney shall indemnify, defend, and hold harmless the City, its agents, and employees from and against any and all liability arising from injury or damage arising out of this agreement resulting in whole or in part from negligent acts or omissions of the Attorney, its agents, servants, officers, or employees, irrespective of whether in connection with such act or omission it is alleged or claimed that an act of the City, its agents, or employees caused or contributed thereto. In the event that the City shall elect to defend itself against any claim or suit arising from such injury or damage, the Attorney shall, in addition to indemnifying and holding the City harmless from any liability, indemnify the City for any and all expenses incurred by the City in defending such claim or suit, including reasonable attorneys' fees.

9. **Entire Agreement.** This agreement reflects the entire agreement between the parties. Any modifications of this agreement must be made in writing and signed by both parties.

Dollars (\$3,000.00) per annum for assignments of prosecution services to special prosecutor necessitated by: (1) conflicts of interest recognized by the Rules of Professional Conduct (RPCs); (2) personal time or immediate family illness; or (3) for the purpose of enabling the Attorney to fulfill continuing legal education requirements. The Attorney shall invoice the City on a monthly basis for any reimbursement requested under this subsection. Reimbursement shall be on a dollar-for-dollar basis.

- D. **Taxes.** The Attorney shall be responsible for all federal, state and local taxes associated with the City's compensation to the Attorney and any tax liability resulting from the Attorney's employment of staff to assist with the representation of the City.
- E. **Mileage.** The Attorney shall be reimbursed for mileage between his office in Ellensburg and any required destination when conducting City business, at the then-established federal rate.

5. **Prosecutorial Immunity.** The City agrees that the Attorney operates with prosecutorial immunity in the course of the Attorney's representation of the City. The City agrees to defend and hold the Attorney harmless from any claims arising from the Attorney's acts or omissions in the scope of the Attorney's representation of the City as set forth by this Contract.

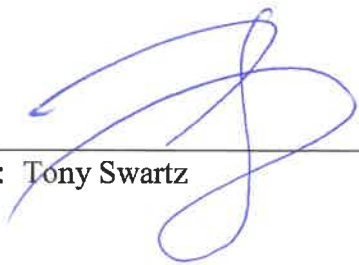
6. **Arbitration and Applicable Law.** If a dispute arises regarding either party's obligations under this Contract, the parties shall be required to first arbitrate in an attempt to resolve the disagreement. The arbitrator shall be agreed to by the parties and shall be an attorney-at-law who is not practicing in Kittitas County. The cost of arbitration shall be split by the parties. Neither party shall be liable for the other party's costs or attorney fees incurred in preparation or attendance at the arbitration. The arbitration may occur during the pendency of a lawsuit filed regarding the same dispute, but must occur at least thirty (30) days before a trial on the disputed issue(s).

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in Kittitas County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees, expert witness fees, and costs of suit.

7. **Default and/or Breach of Contract.** The obligations of both parties under this agreement are bilateral and the failure of one party to perform the duties required by this Contract will be considered a default or breach of contract. If either party fails to perform the obligations set forth in this Contract or performs the obligations in such a manner as would be considered a material breach of this Contract, the other party may be excused from further performance upon a ten (10) day written notice to the breaching party.

Signed this 8 day of ^{JUNE} May, 2016

TONY SWARTZ



By: Tony Swartz

Signed this _____ day of May, 2016

CITY OF CLE ELUM



Hon. Mayor Jay McGowan

Attest: 
City Clerk

Approved as to Form:

City Attorney