

**SECOND AMENDMENT TO THE
AGREEMENT FOR PUBLIC DEFENDER
SERVICES JULY 1, 2020 THROUGH JUNE 30, 2022**

This Agreement is hereby made and entered into this _____ day of _____, 2021 by and between KENNETH V. WARD hereinafter referred to as "Attorney" and the CITY OF FERNLEY, a political subdivision of the State of Nevada, hereinafter referred to as "City."

PART A – APPOINTMENT AS PUBLIC DEFENDER

1. The Fernley City Council shall appoint Attorneys as Public Defender of the City. The parties agree that approval of this Agreement by City Council constitutes appointment as Public Defender for a two (2) year period, commencing July 1, 2020 and ending June 30, 22. Attorney agrees that he is a Public Defender pursuant to Chapter 260 to the Nevada Revised Statutes.

PART B – ADULT CRIMINAL CASES

1. Upon assignment to an adult criminal case, Attorney agrees to perform the services of an attorney in the defense of indigent persons charged with a criminal offense.
2. In any case to which Attorney is assigned, Attorney shall prepare the criminal investigation, trial preparation and defense which is required to provide a full professional defense of the case.
3. In any case which is to be performed by the Attorney, the Attorney shall represent the Defendant at all stages of the proceedings, including sentencing. Attorney shall be required to represent the Defendant on any appeal to the Third Judicial District Court or the Nevada Supreme Court whether based upon a preliminary matter or final judgment.
4. Attorney agrees to provide full professional services for all matters in the City of Fernley.

PART C – OFFICE

1. Attorney agrees to staff and maintain an office in Fernley, Nevada. Attorneys agree to cooperate with the City to establish at no additional cost to the City a system whereby appointed defendants incarcerated in the Lyon County Jail can contact the attorney.
2. The expense of the office space, telephone, fax, computer, furniture, equipment, supplies, and secretarial services suitable for conduct of attorney's practice as

required by this Agreement are the sole responsibility of Attorney. Attorney's expenses described in this paragraph are not a charge against the City as provided in NRS 260.040(5).

PART D – REPORTING

1. Attorney shall report monthly to the City Manager the following information:
 - a. Criminal cases: (1) number of cases opened; (2) types of offenses; and (3) other pertinent information requested by the City Manager.
 - b. Attorneys shall provide this information in a format approved by and acceptable to the City Manager.
2. Beginning July 1, 2021 and ending June 30, 2022, Attorney will report the following information:
 - a. Criminal cases: (1) number of cases opened; (2) types of offenses; and (3) other pertinent information requested by the City Manager.
 - b. Attorney hours per case.
3. If any State statute in effect now or hereinafter enacted requires public defenders to provide certain information or reports, the Attorney agrees to provide and maintain that information at no additional cost to the City.
4. Attorney is not required to provide any information which would compromise client confidentiality or violate any laws or rules of professional conduct. In case of a dispute, the Attorney should attempt to resolve the matter with the City Manager and, if necessary, the City Council.

PART E – INSURANCE

1. Attorney will maintain adequate liability insurance, including errors and omissions coverage and general liability coverage in the amount of at least \$500,000.00 during the term of this agreement. Attorney will provide proof of this insurance coverage to the City during the term of this agreement. The policies must be written with an insurance carrier authorized to do this type of insurance in the State of Nevada. The premium expense for this coverage is the responsibility of the Attorneys.

PART F – PRIVATE LAW PRACTICE

1. Attorney may maintain a private law practice and may engage in the private practice of law which does not conflict with Attorney's professional services

required pursuant to this Agreement. Attorney may, to the extent permitted by the Supreme Court Rules, Rules of Professional Conduct, and applicable law, represent clients in matters before boards and commissions of the City of Fernley. Attorney agrees not to file on behalf of, or represent clients in any lawsuits against the City, its officers, employees, or agents, or entities in which the City Council acts as governing body.

PART G – COMPENSATION

1. City agrees to pay to the Attorney and the Attorney agrees to accept as full compensation for the performance of legal services under this Agreement:
 - a. For Fiscal Year 2020-2021, commencing July 1, 2020 and ending June 30, 2021 the sum of SIXTY THOUSAND DOLLARS (\$60,000.00) in twelve (12) equal monthly installments of: FIVE THOUSAND DOLLARS (\$5,000) due on or before the 5th of each month.
 - b. For Fiscal Year 2021-2022, commencing July 1, 2021 and ending June 30, 2022, the sum of EIGHTY THOUSAND DOLLARS (\$80,000) in twelve (12) equal monthly installments of: SIX THOUSAND SIX HUNDRED AND SIXTY-SIX DOLLARS AND SIXTY-SIX CENTS (\$6,666.66) due on or before the 5th of each month.
2. The parties may increase the contract amount during the term of the contract by mutual agreement of the parties in writing and approved by the Fernley City Council. In the event that the parties do not agree on an increase, the compensation shall remain as stated above.
3. If any State statute in effect now or hereinafter requires the addition of jury trials, both parties agree to discuss the impact on the Public Defender's case load to determine if an increase in the contracted amount is warranted.
4. Attorney may secure reimbursement from City for investigative, required expert or other services necessary for an adequate defense in any assigned matter in the manner set forth in NRS 7.135, 7.145 and 7.155.
5. Attorney understands that this Agreement is for public defender services pursuant to NRS 260.010 through NRS 266.080 and that the provisions as set forth in NRS 7.125 are not applicable, and Attorney is not entitled to any compensation or reimbursement pursuant to NRS 7.125.
6. The compensation specified in Paragraph G.1 is in lieu of the statutorily prescribed fees codified in NRS 7.125.

7. Mileage and travel expenses of Attorneys are the responsibility of the Attorneys, and the City will not pay additional for mileage or travel.

PART H – INDEPENDENT CONTRACTOR

1. Attorney understands that this Agreement is for professional services as an independent contractor and does not create an employer/employee relationship. City does not control the means by which the Attorney provide services. Attorney is not an employee of City and there will be no withholding of income tax or other taxes by City, no provision for workers compensation insurance by City, no group insurance benefits available to City employees, no retirement benefits, and no accumulation of vacation or sick leave or any other employee benefit available to City employees.

PART I – AMENDEMENT/CANCELLATION

1. The parties agree that this Agreement can only be amended by agreement of the parties in writing.
2. This Agreement may be terminated by either party after ninety (90) days written notice to the other party. Attorneys serve at the pleasure of the City Council pursuant to NRS 266.010. This Agreement may be terminated for cause at any time. In the event of termination of this Agreement for any reason, the total compensation due to the Attorney shall be reduced to the proportionate number of days worked by Attorneys.
3. This Agreement may be renewed for the additional terms of one (1) or two (2) years commencing July 1, 2022 at the same or different compensation, as agreed upon by the parties, unless canceled or terminated by the parties as provided herein. Any renewal shall be in writing and must be approved with the same formality as this Agreement.

PART J – ASSIGNMENT AND DELEGATION

1. City is contracting for the personal and professional services of the Attorney. This Agreement or any portion thereof, is not assignable to any other Attorney without the express approval of the City Council.
2. Attorney shall have the authority to contract with and/or employ other qualified attorneys to assist in the performance of this Agreement without prior approval of City. The costs associated with the employment/contract with others shall be paid by the Attorney.

3. Attorney agrees to indemnify and hold harmless City, its officers, agents, and employees from all damages or suits brought by or against any contractor or employee of the Attorney related to the services provided by that contractor or employee.

PART K – CONFLICTS

1. Should Attorney be appointed to represent a defendant which creates a conflict which prohibits Attorneys from representing the Defendant due to the potential of violating Professional Standards as set forth in the Nevada State Supreme Court Rules, the Fernley Municipal Court shall appoint outside counsel to represent the Defendant. The costs of outside counsel shall be paid by the court and the Attorney shall not be responsible to pay for outside counsel costs.

PART L – DISPUTE RESOLUTION

1. If a dispute arises over the interpretation of this Agreement or the performance of this Agreement, Attorney shall contact the City Manager and attempt to resolve the matter. If the City Manager and Attorney cannot agree, Attorney may request that the matter be brought before the City Council for discussion and possible resolution.
2. Any action to enforce the terms of this Agreement must be brought in the Third Judicial District Court of the State of Nevada, in and for the County of Lyon.

PART P – ENTIRE AGREEMENT/GOVERNING LAW

1. This agreement constitutes the entire agreement between the parties and shall be interpreted according to Nevada law.

This Agreement is approved and entered into this ____ day of _____, 2021.

City of Fernley

By: City Manager

By: Mayor

Attest:

City Clerk

This Agreement is approved and entered into this ____ day of _____, 2021.

Kenneth V. Ward, Esq.

State of Nevada }

County of Lyon }

On this ____ day of _____, 2021, personally appeared before me, the undersigned Notary Public in and for the County of Lyon, State of Nevada, Kenneth V. Ward known to me to be the persons who executed the foregoing Agreement for the uses and purposes herein mentioned.

Notary Public