

**RESOLUTION NUMBER 05-091**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH FREDERICK C. ALLINGTON, ESQ. FOR PROSECUTION OF CITY MISDEMEANORS FROM OCTOBER 1, 2005 TO SEPTEMBER 30, 2008.

WHEREAS, pursuant to Idaho Code § 50-208A, City is responsible for prosecuting misdemeanors committed within the municipal limits; and

WHEREAS, said Agreement is in accordance with and authorized by the laws of the State of Idaho, pursuant to Idaho Code § 50-208A and §50-301; and


WHEREAS, the City Council of the City of Ketchum hereby finds that said Agreement is in the best interest of said City and the inhabitants thereof in order to protect and promote the public health, safety, and welfare; and

WHEREAS, Frederick C. Allington, Esq. replied to Request for Proposal and desires to execute an agreement with the City of Ketchum to provide prosecution of City misdemeanors.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Ketchum, Idaho, that the City Council hereby authorizes the Mayor to execute an agreement with Frederick C. Allington, Esq. for prosecution of City misdemeanors from October 1, 2005 to September 20, 2008.

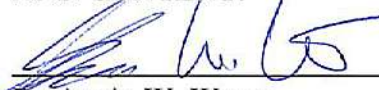
PASSED BY THE CITY COUNCIL and approved by the Mayor this 3<sup>rd</sup> day of October, 2005.

CITY OF KETCHUM,  
An Idaho Municipal Corporation




~~EDWARD SIMON, Mayor~~  
RANDY HALL COUNCIL PRESIDENT

APPROVED AS TO FORM  
AND CONTENT:



Benjamin W. Worst,  
City Attorney

ATTEST:

  
  
Sandra E. Cady, CMC  
Treasurer/Clerk

WHEREAS, the Board of Directors of the City of Ketchikan, Alaska, has determined that it is in the best interests of the City to enter into a contract with the Alaska Department of Transportation and Public Facilities for the purchase of certain real property located in the City of Ketchikan, Alaska, and

WHEREAS, the Board of Directors has determined that it is in the best interests of the City to enter into a contract with the Alaska Department of Transportation and Public Facilities for the purchase of certain real property located in the City of Ketchikan, Alaska, and

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WHEREAS, the Board of Directors has determined that it is in the best interests of the City to enter into a contract with the Alaska Department of Transportation and Public Facilities for the purchase of certain real property located in the City of Ketchikan, Alaska, and

*[Handwritten signatures and text, including a signature that appears to be "Frank..."]*



## AGREEMENT FOR PROSECUTION OF CITY MISDEMEANORS

AGREEMENT made this 19 day of Oct, 2005, between FREDERICK C. ALLINGTON, ESQ., hereinafter referred to as "Attorney", and THE CITY OF KETCHUM, an Idaho municipal corporation ( hereinafter referred to as "City");

### WITNESSETH

WHEREAS, Idaho Code §50-208A requires that the city attorney, his/her deputies or contract counsel of any municipality shall prosecute those violations of county or city ordinances, state traffic infractions and state misdemeanors committed within the municipal limits; and

WHEREAS, Idaho Code §§50-208A and 50-301 allows any city to contract for alternative additional counsel when deemed advisable; and

WHEREAS, the City desires to contract with Attorney to prosecute those violations of county or city ordinances, state traffic infractions and state misdemeanors committed within the municipal limits of the City when the arresting or charging officer is an employee of the City; and

WHEREAS, Attorney desires to contract with the City to accept the duty and receive the authority to prosecute those violations of county or city ordinances, state traffic infractions and state misdemeanors committed within the municipal limits of the City when the arresting or charging officer is an employee of the City; and

WHEREAS, the City deems the expenses corresponding to the services provided by Attorney as ordinary and necessary pursuant to Art. VIII, §3 of the Constitution of the State of Idaho; and

NOW, THEREFORE, in consideration of the foregoing and the City's payment to Attorney of compensation hereinafter provided, the parties hereby agree as follows:

#### 1. PERFORMANCE OF SERVICES.

- A. Attorney will prosecute all misdemeanor crimes, traffic offenses, and ordinance violations occurring within the city limits for which an arrest is made or a citation issued by an officer of City and appeals thereof from magistrate to district court.
- B. In addition, Attorney agrees to provide the City with the following specific services:
  - (1) Render legal advice, when requested, to the City's police department and police officers on a 24 hour per day seven (7) days per week basis (insofar

as is possible) regarding all police matters relating to criminal law and criminal procedure; and

- (2) Consult with City's police officers concerning the filing of charges; and
- (3) Draft all complaints, arrest and search warrants, and summonses relating to criminal charges; and
- (4) Prepare for and conduct all probable cause hearings in cases related to criminal charges; and
- (5) Draft affidavits in support of search warrants and arrest warrants; and arrange, prepare for and conduct all hearings necessary to obtain said warrants; and
- (6) Prepare for and conduct all hearings or motions scheduled for a hearing in any case within the scope of this Agreement, and any appeal thereof from magistrate to district court. Such hearings include but are not limited to, arraignments, bond hearings, motions to suppress and sentencings; and
- (7) Prepare and conduct all trials in any case within the scope of this Agreement, whether such trial shall be by bench or by jury, and any appeal thereof; and
- (8) Keep informed of new developments in criminal law and criminal procedure; and
- (9) Deliver semi-annual reports, in person, to City Council when requested by the Mayor or City Council; and
- (10) Maintain confidentiality, which includes but is not limited to, working in an office that is secure and independent, storing case files containing confidential information in file cabinets that are accessible only to Attorney and his employees, possessing a secure and independent phone system, facsimile line, and computer system; and
- (11) Allow for City Administrator, upon 24 hours notice, to perform an annual inspection to ensure confidentiality is being maintained.

- C. The inclusion of any services by specific reference in this Agreement is not intended as an exclusion of other services necessary and proper to the fulfillment of this Agreement.
  - D. The Attorney agrees that all services provided pursuant to Section 1 of this Agreement shall be in accordance with the Idaho State Bar Association's Rules of Professional Responsibility.
2. **TIME OF PERFORMANCE AND TERMINATION.** This Agreement shall be in full force and effect from the 1<sup>st</sup> day of October, 2005 through the 30<sup>th</sup> day of September, 2008.
3. **COMPENSATION**
- A. Compensation per year of FORTY THOUSAND ONE HUNDRED NINETY SIX DOLLARS (\$40,196) will be paid to Attorney as consideration for providing the services necessary to the fulfillment of this Agreement from October 1, 2005 through September 30, 2006. Compensation per year of FORTY ONE THOUSAND FOUR HUNDRED AND ONE DOLLARS (\$41,401) will be paid to Attorney as consideration for providing the services necessary to the fulfillment of this Agreement from October 1, 2006 through September 30, 2007. Compensation per year of FORTY TWO THOUSAND SIX HUNDRED FORTY THREE DOLLARS (\$42,643) will be paid to Attorney as consideration for providing the services necessary to the fulfillment of this Agreement from October 1, 2007 through September 30, 2008.
  - B. Attorney agrees that the compensation fixed in paragraph 3A above shall constitute the total amount of compensation to be awarded under the terms of this Agreement with payment due on the **first day of each and every month** commencing on October 1, 2005.
  - C. Compensation to all other persons, staff, associates, etc., entities and organizations for services and materials necessary to the fulfillment of the terms of this Agreement, including, without limitation, professional liability insurance, shall be the sole responsibility and obligation of Attorney; Attorney shall have the discretion to hire or retain such clerical, administrative, paralegal or legal help as may be necessary to the fulfillment of the terms of this Agreement.

4. **INDEPENDENT CONTRACTOR STATUS.** Attorney is retained only for the purposes and to the extent set forth in this Agreement. The parties to this Agreement intend that the relationship of the City to Attorney shall be that of an independent contractor. As such, Attorney shall not be entitled to any benefits which the City may provide to its employees, including, but not limited to, unemployment compensation, medical insurance or similar benefits. Nothing herein shall be construed to constitute an intent to form a partnership, employment, joint venture or other relationship except as acknowledged herein by the parties, the parties shall, at all times, take all necessary actions to maintain such relationship, including, but not limited to, the filing of necessary tax documents consistent herewith. Attorney shall be solely responsible for the payment of any and all income, withholding or payroll taxes which might be incurred as a result of the payments made pursuant to Paragraph 3 herein above and hereby agrees to indemnify the City against any and all liability in any manner related to or arising from any failure to pay such amounts including, without limitation, the 100% penalty.
  
5. **COSTS OF PROSECUTION.** City is responsible to pay directly any and all costs of prosecution of its cases which include, but are not limited to, witness fees, travel costs and transcript costs. For costs of prosecution in excess of ONE HUNDRED and no/100 Dollars (\$100.00), Attorney will review the merits of the case and reasons for the costs with the Chief of Police for the City who, in turn, has full discretion to authorize payment of the projected costs of prosecution.
  
6. **CONFLICT OF INTEREST.**
  - A. To the extent that a conflict of interest arises due to a criminal defendant's employment position, the city where the alleged offense occurred, with the assistance of Attorney, shall arrange and pay for the prosecution. Such criminal defendants shall include, but are not limited to, elected and appointed city officials, law enforcement personnel, Blaine County Prosecuting and Deputy Prosecuting Attorneys. Attorney shall make a good faith effort to arrange for a conflict prosecutor at no charge.
  
  - B. To the extent that a conflict of interest arises due to a criminal defendant's position as a practicing attorney whom Attorney has significant contact with as opposing counsel, Attorney shall make a good faith effort to arrange for a conflict attorney to prosecute the case without charge. If Attorney cannot arrange for such a conflict attorney, then the City shall arrange and pay for the cost of prosecution.
  
  - C. To the extent that a conflict of interest arises that is not addressed in Subsections 6A or 6B, Attorney shall arrange and pay for the cost of prosecution.

7. **DISCRETION.** Attorney shall have ultimate discretion in all charging decisions, plea agreements and dispositions of cases prosecuted on behalf of City, but will fully consider the requests and input of the chief of police of City with regard to particular cases or class of cases.
8. **COMPLIANCE WITH LAWS.** Attorney agrees to comply with all federal, state, city and local laws, rules and regulations.
9. **TERMINATION OF AGREEMENT.**
  - A. The parties agree that the City may terminate this Agreement upon sixty (60) days prior written notice upon:
    - (1) A finding by the City, after considering the Attorney's response, that the Attorney has not consistently performed his duties under the terms of this Agreement or has violated the provisions of this Agreement. The City's notice shall set forth the facts upon which a violation is based. Attorney shall be entitled to respond to the City within thirty (30) days of receiving said notice.
  - B. The City may terminate this Agreement immediately upon Attorney's:
    - (1) Conviction by a court of competent jurisdiction of a crime involving moral turpitude, which shall include but not be limited to, driving under the influence of alcohol, theft and physical or sexual abuse; or
    - (2) Disbarment or suspension of Attorney's license to practice law in the State of Idaho.
  - C. In the event that the City shall terminate this Agreement pursuant to Subsections 9A and 9B above, then Attorney shall not be entitled to any further compensation from the City.
10. **MAINTENANCE, STORAGE AND ACCESS OF RECORDS.** Attorney shall maintain the case files until they are closed by conviction, acquittal, dismissal or until the probationary term has expired (whichever comes later). Case files containing confidential information shall be stored in file cabinets that are accessible only to Attorney and his employees.
11. **PHONE ACCESS AND INTERNET ACCESS.** Attorney shall maintain a secure, independent phone system and computer system.

12. **AMENDMENTS/ASSIGNMENT.** This Agreement may only be changed, modified, amended or assigned upon the written consent of all the parties.
13. **HEADINGS.** The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provisions hereof.
14. **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is deemed invalid or unenforceable by a court of competent jurisdiction, such decision or decisions shall not affect the validity of the remaining portions hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.
15. **ATTORNEYS' FEES AND COSTS.** Should any action be brought to interpret or enforce any provision hereof, or for damages for breach hereof, the prevailing party shall be entitled to such reasonable attorneys' fees and costs, as may be determined by any court of competent jurisdiction wherein such action is brought, including attorneys' fees and costs on appeal.
16. **BINDING AGREEMENT.** This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereof.
17. **ENTIRE AGREEMENT.** This Agreement shall constitute the entire agreement of the parties and is the sum total of the agreements and understandings of the parties hereto, and supersedes and replaces any other written or oral agreements or understandings.
18. **INTERPRETATION.** This Agreement shall be liberally construed in accordance with the general purposes of this Agreement and the laws of the State of Idaho.
19. **NO PRESUMPTION.** No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of this document.
20. **EXECUTION.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all together shall constitute one and the same instrument.
21. **ACCEPTANCE.** The parties fully understand all of the provisions of this Agreement, and believe them to be fair, just, adequate and reasonable, and accordingly accept the provisions of this Agreement freely and voluntarily.



22. **AUTHORITY.** Each City hereby represents and acknowledges that the execution of this Agreement has been duly authorized and approved by each City herein.

23. **INDEMNIFICATION.** From and after the commencement of this Agreement, Attorney hereby agrees to hold the City harmless and indemnify the City from any claims which arise or result from the Attorney's handling of the prosecution of any matter pursuant to this Agreement. This provision is intended to cover all aspects of the Attorney's involvement in a prosecution, including all decisions or conduct prior to charging a defendant as well as thereafter. The term "claims" as used herein shall mean and include any and all liabilities, damages injuries, losses, causes of action, judgments, rights or demands of every kind, asserted or which may be asserted.

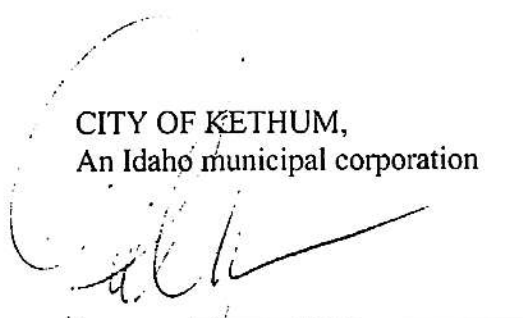
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ATTORNEY:



Frederick C. Allington

CITY OF KETHUM,  
An Idaho municipal corporation



Ed Simon, Mayor